



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

David Vilar requests a variance of 10 ft to the required 10 ft side yard setback for Lot 8, Tijeras Heights Subdivision, located on 12804 Piru Blvd SE, zoned R-1D [Section 14-16-5-1]

Special Exception No:**VA-2018-00031**
Project No:**Project# 2018-001293**
Hearing Date:09-18-18
Closing of Public Record:09-18-18
Date of Decision:10-03-18

On the 18th day of September, 2018, property owner David Vilar (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 10 ft to the required 10 ft side yard setback (“Application”) upon the real property located at 12804 Piru Blvd SE (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 10 ft to the required 10 ft side yard setback.
2. The City of Albuquerque Integrated Development Ordinance, Section 14-16-6-6(N)(3)(a) (Variance-Review and Decision Criteria) reads: “... an application for a Variance-ZHE shall be approved if it meets all of the following criteria: (1) *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. Such special circumstances of the property either create an extraordinary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the property, or practical difficulties result from strict compliance with the minimum standards.* (2) *The Variance will not be materially contrary to the public safety, health, or welfare.* (3) *The Variance does not cause significant material adverse impacts on surrounding properties or infrastructure improvements in the vicinity.* (4) *The Variance will not materially undermine the intent and purpose of the IDO or the applicable zone district.* (5) *The Variance approved is the minimum necessary to avoid extraordinary hardship or practical difficulties.*”
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 14-16-6-4-(F)(2).
4. The application had been previously scheduled for hearing on the August 21, 2018 agenda. August 20, 2018, owner Vilar, submitted an e-mail requesting the hearing be deferred to the September agenda, due to personal matters. Since it was too late to notify the public, six (6) or several persons appeared to give evidence in opposition to the application. The ZHE had granted the deferral on Applicant’s request, however, since the opposing persons had appeared to give evidence, the ZHE decided to permit the individuals to submit their evidence into the record. The ZHE ordered a copy of the recording, copies of photographs and documents submitted to be transmitted to

applicant, with the ZHE's request that applicant be prepared to respond to issues raised in opposition when the hearing commenced on the September agenda.

5. Mike Davidson, 12800 Piru SE, appeared and gave evidence in opposition to the application.
6. Diane Davidson, 12800 Piru SE, appeared and gave evidence in opposition to the application.
7. Mr. and Mrs. Davidson are the immediate next door neighbors to the subject address.
8. They submitted photographs evidencing deterioration to their common wall, caused by improper placement of the project.
9. They submitted photographs evidencing outward appearance of the project and how it does not conform to the architectural character of adjacent properties or the surrounding neighborhood.
10. They pointed out the application states the "existing, already built room of 10' X 10' is called a "pool room".
11. They submitted document evidence in the form of "screen shots" of an Air BNB website advertising the room as a "bed room".
12. They submitted photographs, evidencing public health and safety issues to it, an unprotected exterior gas supply line, with no warning sign, in this bedroom.
13. Ilena Estrella, 933 San Mateo NE, appeared and gave evidence in opposition to the application.
14. Gary Hays, 12724 Piru SE, appeared and gave evidence in opposition to the application.
15. Martina Mesmer, 511 Eugene Court, appeared and gave evidence in opposition to the application.
16. Judy Young, 13309 Rachel Road SE, appeared and gave evidence in opposition to the application.
17. John McBrayer, Ph.D., 12720 Piru SE, submitted an e-mail dated August 18, 2018 in opposition to the application.
18. Don L. Hanosh, 12812 Piru SE, submitted an e-mail in opposition to the application dated August 20, 2018. It states the application allegedly violates "at least four Tijeras Heights Restrictive Covenants."
19. Roger and Wanda Umber, 12520 Piru SE, submitted a letter dated August 11, 2018, in opposition to the application.
20. A criminal action has been filed in Bernalillo County Metropolitan Court by the City of Albuquerque alleging code violations against Applicant/defendant.
21. ZHE acknowledges this potentially raises issues of his constitutional privileges, when the facts in this application may implicate him in the criminal allegations.
22. An audio copy of the evidence submitted by the above persons in opposition and copies of photographs and documents submitted were transmitted to Applicant.
23. David Vilar, owner, appeared and Zachary Ogaz, Attorney at law, filed a written entry of appearance before Applicant took his oath.
24. ZHE then stated knowledge of the parallel criminal action filed in Metro Court, and gave Applicant a complete recitation of his privileges, both state and federal.
25. Applicant stated he understood his privileges as recited by the ZHE. The ZHE then requested that the Applicant and his attorney confer and decide how to proceed.

26. The ZHE found that the Applicant knowingly and intelligently waived his privileges and allowed Applicant to give evidence in support of his application.
27. He acknowledged receipt of the prior hearing evidence submitted by the six persons in opposition to the application and indicated he would address the issues that were raised.
28. Applicant stated he constructed the pool room, completely unaware that the city required a permit to construct the accessory structure.
29. Applicant stated that he had converted the use to a rented bedroom, again stating he was unaware he needed permits for these actions.
30. Applicant stated in his justification letter accompanying the application in response to the question of special circumstances “these special circumstances create a hardship because the pool room is already built... and it is difficult to return the property back to the original state and will cause significant financial hardship.” (Emphasis in original application.)
31. Mike Davidson, 12800 Piru SE, appeared and gave evidence in opposition to the application.
32. Davidson stated he had informed Applicant that he was constructing the pool house in a required setback and that he would need permission from the city before he built.
33. Davidson stated Applicant had improperly backfilled to a depth of 24” before he poured the concrete pad for the pool room.
34. Davidson pointed out in photographs submitted (Ex. C) the discolored area rising approximately 24”, visible from his side of their common wall, evidencing ongoing deterioration to the wall, potentially leading to collapse and economic hardship and injury to him as an adjacent property owner.
35. Ilena Estrella, 935 San Mateo NE, appeared and gave evidence in opposition to the application.
36. Martina Mesmer, 511 Eugene Court, appeared and gave evidence in opposition to the application.
37. Judy Young, Rachel Road SE, appeared and gave evidence in opposition to the application.
38. Wanda Umber, 12520 Piru SE, appeared and gave evidence in opposition to the application.
39. Applicant was given an opportunity to respond to anything stated by persons in opposition.
40. Covenants cannot be enforced by the city, however, the ZHE can review as a factor in determining if the application causes significant material adverse impacts on the surrounding properties.
41. The alleged special circumstances were self-imposed.
42. Significant material adverse impact on surrounding properties in the vicinity is already apparent and obvious, since the results of the improperly placed structure are apparent in the exhibits.
43. Any extraordinary hardships were self-imposed.
44. The ZHE finds that the Applicant has authority to pursue this Application.

CONCLUSIONS OF LAW:

The criteria within Section 14-16-6-6(N)(3)(a) of the Integrated Development Ordinance Albuquerque Zoning Code are not satisfied.

DECISION:

The request for a variance of 10 ft to the required 10 ft side yard setback is DENIED.

If you wish to appeal this decision, you must do so by October 18, 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 must be filed with the Planning Department within 15 days after the decision. The appeal shall specifically state the section of the Integrated Development Ordinance, City regulation, or condition attached to a decision that has not been interpreted correctly, as required by Section 14-16-6-4(U)(3)(a)(3) of the Integrated Development Ordinance. 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.

Once an appeal is accepted by the Planning Department, it shall prepare and transmit a record of the appeal together with all appeal material received from the appellant to impacted parties and to the Land Use Hearing Officer (LUHO) through the Clerk of the City Council.

The LUHO shall then schedule a hearing on the matter within 30 consecutive days of receipt and notify the parties, pursuant to Section 14-16-6-4(U)(3)(d). The Planning Department 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 14-16-6-4(U), of the Integrated Development Ordinance, 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.



Stan Harada, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
David Vilar, 12804 Piru Blvd, 87123
Mike Davidson, 12800 Piru Blvd SE, 87123
Ilena Estrella, 12928 Marva Place SE, 87123
Wanda Umber, 12520 Piru SE, 87123
Martina Mesmer, 511 Eugene CT SE, 87123
Judy Young, 13309 Rachel Rd SE, 87123
Don L. Hanosh, 12812 Piru SE, 87123
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