



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

SCHMIDT GERTRUDE ZACHARY
TRUSTEE SCHMIDT TRUST (ED
PASCHICH, AGENT) requests a special
exception to Section 14-16-2-23(A) and pg.
92 (D)(1) / DNA: a VARIANCE of 272 square
feet to the 5,000 required to allow 3
proposed new lots out of 4 existing lots for
lot 18 and a portion of Lot 17 for all or a
portion of lots 15,16,17,18, Block 41, Perea
Addn zoned SU-2 DNA-SF, located on 723
14TH ST NW (J-13)

Special Exception No:**17ZHE-80287**
Project No:**Project# 1011486**
Hearing Date:02-20-18
Closing of Public Record:02-20-18
Date of Decision:03-07-18

On the 20th day of February, 2018, ED PASCHICH (“Agent”) acting as agent on behalf of the property owner SCHMIDT GERTRUDE ZACHARY TRUSTEE SCHMIDT TRUST (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 272 square feet to the 5,000 required to allow 3 proposed new lots out of 4 existing lots upon the real property located at 723 14TH ST NW (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 272 square feet to the 5,000 required to allow 3 proposed new lots out of 4 existing lots.
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. Here Applicant has four, 25' wide lots that were platted in 1895. After a 2012 rezoning each lot has a 5' side setback, making it exceedingly difficult to make reasonable use of each individual lot.
5. Rather than attempt to construct substandard-sized dwellings or seek variances to the setbacks, Applicant reasonably seeks to replat the four lots into three. Each lot would then be 33 1/3 feet wide, allowing for a 23 1/3 foot wide dwelling.
6. However, given the now-applicable minimums of 50 foot lot width and 5,000 square foot lot area variances are needed.
7. 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).
8. Specifically, the ZHE finds that the re-plat will actually reduce density and ensure that no setback variances are needed, providing for the full required setbacks.
9. The Application is supported by the neighborhood association, indicating a further lack of injury.
10. 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).
11. Specifically, the ZHE finds that the 1895 25x142 platting coupled with the 2012 rezoning imposing setbacks on 10 feet of the available 25 feet and a minimum size of 5,000 square feet constitutes a special circumstance applicable to only a limited set of properties in the zone.
12. Moreover, Applicant seeks only a minimal variance of the lot size requirement.
13. 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).
14. Specifically, the ZHE finds that these circumstances are not self-imposed and do create an unnecessary hardship.
15. 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).
16. 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).
17. 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 272 square feet to the 5,000 required to allow 3 proposed new lots out of 4 existing lots.

If you wish to appeal this decision, you must do so by March 22, 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 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.



Christopher L. Graeser, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement

ZHE File

Schmidt Gertrude Zachary Trustee Schmidt Trust, 723 14th ST NW, 87104
Ed Paschich, PO BOX 25142, 87125



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

SCHMIDT GERTRUDE ZACHARY
TRUSTEE SCHMIDT TRUST (ED
PASCHICH, AGENT) requests a special
exception to Section 14-16-2-23(A) and pg.
92 DNA (A)(1) / 14-16-2-6(D)(2)(a)(2): a
VARIANCE of 17ft to the 50ft lot width to
allow 3 proposed new lots out of 4 existing
lots for lot 18 and a portion of Lot 17 for all or
a portion of Lots 15,16,17,18, Block 41,
Perea Addn zoned SU-2 DNA-SF, located
on 723 14TH ST NW (J-13)

Special Exception No:**17ZHE-80288**
Project No:**Project# 1011486**
Hearing Date:02-20-18
Closing of Public Record:02-20-18
Date of Decision:03-07-18

On the 20th day of February, 2018, ED PASCHICH (“Agent”) acting as agent on behalf of the property owner SCHMIDT GERTRUDE ZACHARY TRUSTEE SCHMIDT TRUST (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 17ft to the 50ft lot width to allow 3 proposed new lots out of 4 existing lots (“Application”) upon the real property located at 723 14TH ST NW (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 17ft to the 50ft lot width to allow 3 proposed new lots out of 4 existing lots.
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. Here Applicant has four, 25' wide lots that were platted in 1895. After a 2012 rezoning each lot has a 5' side setback, making it exceedingly difficult to make reasonable use of each individual lot.
5. Rather than attempt to construct substandard-sized dwellings or seek variances to the setbacks, Applicant reasonably seeks to replat the four lots into three. Each lot would then be 33 1/3 feet wide, allowing for a 23 1/3 foot wide dwelling.
6. However, given the now-applicable minimums of 50 foot lot width and 5,000 square foot lot area variances are needed.
7. 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).
8. Specifically, the ZHE finds that the re-plat will actually reduce density and ensure that no setback variances are needed, providing for the full required setbacks.
9. The Application is supported by the neighborhood association, indicating a further lack of injury.
10. 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).
11. Specifically, the ZHE finds that the 1895 25x142 platting coupled with the 2012 rezoning imposing setbacks on 10 feet of the available 25 feet and a minimum size of 5,000 square feet constitutes a special circumstance applicable to only a limited set of properties in the zone.
12. Moreover, Applicant seeks only a minimal variance of the lot size requirement.
13. 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).
14. Specifically, the ZHE finds that these circumstances are not self-imposed and do create an unnecessary hardship.
15. 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).
16. 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).
17. 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 17ft to the 50ft lot width to allow 3 proposed new lots out of 4 existing lots.

If you wish to appeal this decision, you must do so by March 22, 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 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.



Christopher L. Graeser, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement

ZHE File

Schmidt Gertrude Zachary Trustee Schmidt Trust, 723 14th ST NW, 87104
Ed Paschich, PO BOX 25142, 87125



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

SCHMIDT GERTRUDE ZACHARY
TRUSTEE SCHMIDT TRUST (ED
PASCHICH, AGENT) requests a special
exception to Section 14-16-2-23(A) and pg.
92 (D)(1) / DNA: a VARIANCE of 272 square
feet to the 5,000 required to allow 3
proposed new lots out of 4 existing lots for a
portion of lot 17 and a portion of lot 16 for all
or a portion of Lots 15,16,17,18, Block 41,
Perea Addn zoned SU-2 DNA-SF, located
on 723 14TH ST NW (J-13)

Special Exception No:**18ZHE-80024**
Project No:**Project# 1011486**
Hearing Date:02-20-18
Closing of Public Record:02-20-18
Date of Decision:03-07-18

On the 20th day of February, 2018, ED PASCHICH (“Agent”) acting as agent on behalf of the property owner SCHMIDT GERTRUDE ZACHARY TRUSTEE SCHMIDT TRUST (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 272 square feet to the 5,000 required to allow 3 proposed new lots out of 4 existing lots (“Application”) upon the real property located at 723 14TH ST NW (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 272 square feet to the 5,000 required to allow 3 proposed new lots out of 4 existing lots.
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. Here Applicant has four, 25' wide lots that were platted in 1895. After a 2012 rezoning each lot has a 5' side setback, making it exceedingly difficult to make reasonable use of each individual lot.
5. Rather than attempt to construct substandard-sized dwellings or seek variances to the setbacks, Applicant reasonably seeks to replat the four lots into three. Each lot would then be 33 1/3 feet wide, allowing for a 23 1/3 foot wide dwelling.
6. However, given the now-applicable minimums of 50 foot lot width and 5,000 square foot lot area variances are needed.
7. 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).
8. Specifically, the ZHE finds that the re-plat will actually reduce density and ensure that no setback variances are needed, providing for the full required setbacks.
9. The Application is supported by the neighborhood association, indicating a further lack of injury.
10. 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).
11. Specifically, the ZHE finds that the 1895 25x142 platting coupled with the 2012 rezoning imposing setbacks on 10 feet of the available 25 feet and a minimum size of 5,000 square feet constitutes a special circumstance applicable to only a limited set of properties in the zone.
12. Moreover, Applicant seeks only a minimal variance of the lot size requirement.
13. 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).
14. Specifically, the ZHE finds that these circumstances are not self-imposed and do create an unnecessary hardship.
15. 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).
16. 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).
17. 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 272 square feet to the 5,000 required to allow 3 proposed new lots out of 4 existing lots.

If you wish to appeal this decision, you must do so by March 22, 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 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.



Christopher L. Graeser, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement

ZHE File

Schmidt Gertrude Zachary Trustee Schmidt Trust, 723 14th ST NW, 87104
Ed Paschich, PO BOX 25142, 87125



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

SCHMIDT GERTRUDE ZACHARY
TRUSTEE SCHMIDT TRUST (ED
PASCHICH, AGENT) requests a special
exception to Section 14-16-2-23(A) and pg.
92 (D)(1) / DNA: a VARIANCE of 272 square
feet to the 5,000 required to allow 3
proposed new lots out of 4 existing lots for a
portion of lot 16 and lot 15 for all or a portion
of Lots 15,16,17,18, Block 41, Perea Addn
zoned SU-2 DNA-SF, located on 723 14TH
ST NW (J-13)

Special Exception No:**18ZHE-80025**
Project No:**Project# 1011486**
Hearing Date:02-20-18
Closing of Public Record:02-20-18
Date of Decision:03-07-18

On the 20th day of February, 2018, ED PASCHICH (“Agent”) acting as agent on behalf of the property owner SCHMIDT GERTRUDE ZACHARY TRUSTEE SCHMIDT TRUST (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 272 square feet to the 5,000 required to allow 3 proposed new lots out of 4 existing lots (“Application”) upon the real property located at 723 14TH ST NW (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 272 square feet to the 5,000 required to allow 3 proposed new lots out of 4 existing lots.
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. Here the Applicant has four, 25' wide lots that were platted in 1895. After a 2012 rezoning each lot has a 5' side setback, making it exceedingly difficult to make reasonable use of each individual lot.
5. Rather than attempt to construct substandard-sized dwellings or seek variances to the setbacks, Applicant reasonably seeks to replat the four lots into three. Each lot would then be 33 1/3 feet wide, allowing for a 23 1/3 foot wide dwelling.
6. However, given the now-applicable minimums of 50 foot lot width and 5,000 square foot lot area variances are needed.
7. 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).
8. Specifically, the ZHE finds that the re-plat will actually reduce density and ensure that no setback variances are needed, providing for the full required setbacks.
9. The Application is supported by the neighborhood association, indicating a further lack of injury.
10. 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).
11. Specifically, the ZHE finds that the 1895 25x142 platting coupled with the 2012 rezoning imposing setbacks on 10 feet of the available 25 feet and a minimum size of 5,000 square feet constitutes a special circumstance applicable to only a limited set of properties in the zone.
12. Moreover, Applicant seeks only a minimal variance of the lot size requirement.
13. 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).
14. Specifically, the ZHE finds that these circumstances are not self-imposed and do create an unnecessary hardship.
15. 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).
16. 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).
17. 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 272 square feet to the 5,000 required to allow 3 proposed new lots out of 4 existing lots.

If you wish to appeal this decision, you must do so by March 22, 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 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.



Christopher L. Graeser, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement

ZHE File

Schmidt Gertrude Zachary Trustee Schmidt Trust, 723 14th ST NW, 87104
Ed Paschich, PO BOX 25142, 87125



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

SCHMIDT GERTRUDE ZACHARY
TRUSTEE SCHMIDT TRUST (ED
PASCHICH, AGENT) requests a special
exception to Section 14-16-2-23(A) and pg.
92 DNA (A)(1) / 14-16-2-6(D)(2)(a)(2): a
VARIANCE of 272 square feet to the 5,000
required to allow 3 proposed new lots out of
4 existing lots for a portion of lot 17 and a
portion of lot 16 for all or a portion of Lots 15,
16, 17, 18, Block 41, Perea Addn zoned SU-
2 DNA-SF, located on 723 14TH ST NW (J-
13)

Special Exception No:**18ZHE-80027**
Project No:**Project# 1011486**
Hearing Date:02-20-18
Closing of Public Record:02-20-18
Date of Decision:03-07-18

On the 20th day of February, 2018, ED PASCHICH (“Agent”) acting as agent on behalf of the property owner SCHMIDT GERTRUDE ZACHARY TRUSTEE SCHMIDT TRUST (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 272 square feet to the 5,000 required to allow 3 proposed new lots out of 4 existing lots (“Application”) upon the real property located at 723 14TH ST NW (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 272 square feet to the 5,000 required to allow 3 proposed new lots out of 4 existing lots.
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. Here Applicant has four, 25' wide lots that were platted in 1895. After a 2012 rezoning each lot has a 5' side setback, making it exceedingly difficult to make reasonable use of each individual lot.
5. Rather than attempt to construct substandard-sized dwellings or seek variances to the setbacks, Applicant reasonably seeks to replat the four lots into three. Each lot would then be 33 1/3 feet wide, allowing for a 23 1/3 foot wide dwelling.
6. However, given the now-applicable minimums of 50 foot lot width and 5,000 square foot lot area variances are needed.
7. 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).
8. Specifically, the ZHE finds that the re-plat will actually reduce density and ensure that no setback variances are needed, providing for the full required setbacks.
9. The Application is supported by the neighborhood association, indicating a further lack of injury.
10. 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).
11. Specifically, the ZHE finds that the 1895 25x142 platting coupled with the 2012 rezoning imposing setbacks on 10 feet of the available 25 feet and a minimum size of 5,000 square feet constitutes a special circumstance applicable to only a limited set of properties in the zone.
12. Moreover, Applicant seeks only a minimal variance of the lot size requirement.
13. 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).
14. Specifically, the ZHE finds that these circumstances are not self-imposed and do create an unnecessary hardship.
15. 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).
16. 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).
17. 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 272 square feet to the 5,000 required to allow 3 proposed new lots out of 4 existing lots.

If you wish to appeal this decision, you must do so by March 22, 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 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.



Christopher L. Graeser, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement

ZHE File

Schmidt Gertrude Zachary Trustee Schmidt Trust, 723 14th ST NW, 87104
Ed Paschich, PO BOX 25142, 87125



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

SCHMIDT GERTRUDE ZACHARY
TRUSTEE SCHMIDT TRUST (ED
PASCHICH, AGENT) requests a special
exception to Section 14-16-2-23(A) and pg.
92 DNA (A)(1) / 14-16-2-6(D)(2)(a)(2): a
VARIANCE of 17ft to the 50ft lot width to
allow 3 proposed new lots out of 4 existing
lots for a portion of lot 16 and lot 15 for all or
a portion of Lots 15, 16, 17, 18, Block 41,
Perea Addn zoned SU-2 DNA-SF, located
on 723 14TH ST NW (J-13)

Special Exception No:**18ZHE-80028**
Project No:**Project# 1011486**
Hearing Date:02-20-18
Closing of Public Record:02-20-18
Date of Decision:03-07-18

On the 20th day of February, 2018, ED PASCHICH (“Agent”) acting as agent on behalf of the property owner SCHMIDT GERTRUDE ZACHARY TRUSTEE SCHMIDT TRUST (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 17ft to the 50ft lot width to allow 3 proposed new lots out of 4 existing lots (“Application”) upon the real property located at 723 14TH ST NW (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 17ft to the 50ft lot width to allow 3 proposed new lots out of 4 existing lots.
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. Here Applicant has four, 25' wide lots that were platted in 1895. After a 2012 rezoning each lot has a 5' side setback, making it exceedingly difficult to make reasonable use of each individual lot.
5. Rather than attempt to construct substandard-sized dwellings or seek variances to the setbacks, Applicant reasonably seeks to replat the four lots into three. Each lot would then be 33 1/3 feet wide, allowing for a 23 1/3 foot wide dwelling.
6. However, given the now-applicable minimums of 50 foot lot width and 5,000 square foot lot area variances are needed.
7. 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).
8. Specifically, the ZHE finds that the re-plat will actually reduce density and ensure that no setback variances are needed, providing for the full required setbacks.
9. The Application is supported by the neighborhood association, indicating a further lack of injury.
10. 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).
11. Specifically, the ZHE finds that the 1895 25x142 platting coupled with the 2012 rezoning imposing setbacks on 10 feet of the available 25 feet and a minimum size of 5,000 square feet constitutes a special circumstance applicable to only a limited set of properties in the zone.
12. Moreover, Applicant seeks only a minimal variance of the lot size requirement.
13. 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).
14. Specifically, the ZHE finds that these circumstances are not self-imposed and do create an unnecessary hardship.
15. 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).
16. 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).
17. 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 17ft to the 50ft lot width to allow 3 proposed new lots out of 4 existing lots.

If you wish to appeal this decision, you must do so by March 22, 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 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.



Christopher L. Graeser, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement

ZHE File

Schmidt Gertrude Zachary Trustee Schmidt Trust, 723 14th ST NW, 87104
Ed Paschich, PO BOX 25142, 87125