



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

Keith Auger and Patricia Scanlon request a variance of 5 ft to the 5 ft side yard setback for Lot 7, Block 8, Sunset Terrace Addn, located at 1021 Girard Blvd NE, zoned R-1B [Section 14-16-5-1(C)(1)

Special Exception No:..... **VA-2019-00036**
Project No: **Project# 2019-002025**
Hearing Date: 03-19-19
Closing of Public Record: 03-19-19
Date of Decision: 04-03-19

On the 19th day of March, 2019, property owners Keith Auger and Patricia Scanlon (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 5 ft to the 5 ft side yard setback (“Application”) upon the real property located at 1021 Girard Blvd NE (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 5 ft to the 5 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 that are not self-imposed and that 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(N)(1).
4. Debbie Reynolds, agent for Keith and Patricia Auger, property owners appeared and gave evidence in support of the application.
5. All property owners within 100 feet of the subject property and the affected neighborhood association were notified.

6. North Campus Neighborhood Association and Summit Park Neighborhood Association are the affected neighborhood associations.
7. The subject property is currently zoned R-1B.
8. Transportation has reported no objection to the request.
9. Applicants have lived in the subject residence for 40 years.
10. The original development plan for this area, placed the dwellings closer to the rear of the property lots.
11. This created a relatively small backyard area.
12. There is an existing concrete patio in the rear yard area, which was shaded by a large tree.
13. They lost this tree, and the entire area is now exposed to unrestricted sunlight.
14. This intense heat makes this area, as well as the exposed kitchen area to become unusable or at least uncomfortable without shade.
15. The requested variance would allow Applicants to construct a shade structure, and allow the back yard patio and kitchen area to become usable again.
16. The shade structure will be constructed of materials and colors which will match the existing residence and color scheme.
17. The design will cause drainage to remain on the subject property and not adversely impact adjacent neighbors.
18. An e-mail, from adjacent property owners Pam Cutler and Robert McDermitt, 1023 Girard NE, dated January 9, 2019, was submitted in support of the requested variance.
19. A letter from Sara, Emily and Joel Koplik, 1025 Girard NE, 87106, dated January 21, 2019, was submitted in support of the requested variance.
20. Sara Koplik, is the current co-president of the North Campus Neighborhood Association.
21. A letter from Connie Tsui, 1017 Girard NE, 87106, was submitted in support of the requested variance.
22. A site plan was submitted in support of the requested variance.
23. There are special circumstances applicable to the Subject Property that are not self-imposed and that 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 14-16-6-6(N)(3)(a)(1).
24. The variance will not be contrary to the public safety, health and welfare of the community as required by Section 14-16-6-6(N)(3)(a)(2).
25. The variance will not cause significant adverse material impacts on surrounding properties or infrastructure improvements in the vicinity as required by Section 14-16-6-6(N)(3)(a)(3).
26. The variance will not materially undermine the intent and purpose of the IDO or applicable zone district as required by Section 14-16-6-6(N)(3)(a)(4).
27. The variance approved is the minimum necessary to avoid extraordinary hardship or practical difficulties as required by Section 14-16-6-6(N)(3)(a)(5).
28. The proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
29. The Applicant has authority to pursue this Application.

DECISION:

APPROVAL of a variance of 5 ft to the 5 ft side yard setback.

APPEAL:

If you wish to appeal this decision, you must do so by April 18, 2019 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.

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
Keith Auger and Pat Scanlon, 1021 Girard NE, 87106
Debbie Reynolds, 10220 Eagle Rock NE, 87122