



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

Enrique Sotelo requests a variance of 15 ft to the 15 ft rear yard setback for Lot 1, Block 1, Palisades Addn, located at 401 Loma Hermosa DR NW, zoned MX-M [Section 14-16-5-1(D)]

Special Exception No:..... **VA-2019-00038**
Project No: **Project# 2019-002041**
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, Yolanda Montoya, agent for property owner Enrique Sotelo (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 15 ft to the 15 ft rear yard setback (“Application”) upon the real property located at 401 Loma Hermosa DR NW (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 15 ft to the 15 ft rear 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. Yolanda Montoya, agent for Enrique Sotelo, property owner 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. West Mesa Neighborhood is the affected neighborhood association.
7. The NA was notified by e-mail January 22, 2019.
8. The subject property is currently zoned MX-M.
9. A site plan was submitted in support of the requested variance.
10. The requested variance is from Mixed-Use Zone District Dimensional Standards, Section 14-16-5-1(D).
11. The subject lot is a unique, unusual triangular shaped piece of property, located at the intersection of Loma Hermosa NW and Blue Water NW.
12. The subject lot is undeveloped.
13. The unusual shape and dimensions of the lot, make it difficult to construct a new economically feasible house utilizing the required rear set-back.
14. The rear yard property line is adjacent to an existing 20 foot wide public alleyway.
15. The owner intends to construct two single family buildings on the subject property.
16. The adjacent neighborhood consists of townhouses and multi –family apartment complexes.
17. The proposed new resident construction will match the color and architectural character of the surrounding community.
18. 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).
19. 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).
20. 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).
21. 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).
22. 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).
23. The proper “Notice of Hearing” signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
24. The Applicant has authority to pursue this Application.

DECISION:

APPROVAL of a variance of 15 ft to the 15 ft rear 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
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