



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

Janet McHard and Beth Mohr requests a variance of 5 ft to the 15 ft rear yard setback for Lot 5, Block 12, Mesa Court Addn, located at 4031 Smith Ave SE, zoned R1-D, [Section 14-16-5-1(C)(1)]

Special Exception No:..... **VA-2019-00045**
Project No: **Project# 2019-002064**
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 co-owner Janet McHard (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 5 ft to the 15 ft rear yard setback (“Application”) upon the real property located at 4031 Smith Ave SE (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance 5 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. Janet McHard, co-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. The property is in an Airport Protection Overlay Zone, (nonconformity), Section 14-16-3-3.
7. An e-mail from Jim Hinde, Deputy Director, ABQ Sunport, dated February 28, 2019, reporting “No comment on the variance request”, was submitted in support of the Application.
8. An e-mail from Malak Hakim, AICP, Community Planner Kirtland AFB, dated February 27, 2019, reporting “No concerns with the request”, was submitted in support of the Application.
9. Southeast Heights Neighborhood Association is the affected neighborhood association.
10. The NA was notified by e-mail dated January 22, 2019.
11. The subject property is currently zoned R-1D
12. The required rear yard minimum setback is 15 feet in an R-1D resident zone district.
13. The requested variance is to allow an accessory building to be extended.
14. The rear edge of the primary building is currently 30 feet from the rear property line.
15. The requested variance will allow construction of an ADA complaint wheel-in shower for a handicapped resident in the accessory building.
16. The proposed accessory building would comply with the side yard minimum set back.
17. No adjacent properties would be affected by the requested variance.
18. A site plan, with accompanying photographs of the existing house and surrounding property was submitted in support of the Application.
19. The closest (30 feet) adjacent property is a porch on their neighbor’s property.
20. 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).
21. 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).
22. 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).
23. 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).
24. 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).
25. The proper “Notice of Hearing” signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
26. The Applicant has authority to pursue this Application.

DECISION:

APPROVAL of a variance of 5 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
Janet McHard, Beth Mohr, 4031 Smith Ave SE, 87108