



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

NM Real Estate Financial Solutions requests a variance of 3 ft 9 inches to the 10 ft rear yard setback for the western portion of Lot 214A2, MRGCD MAP 41, located at 411 Anderson Ave SE, zoned R1-A [Section 14-16-5-1(C)(1)]

Special Exception No:..... **VA-2019-00050**  
Project No: ..... **Project# 2019-001374**  
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, Derrick Archuleta, agent for property owner NM Real Estate Financial Solutions (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 3 ft 9 inches to the 10 ft rear yard setback (“Application”) upon the real property located at 411 Anderson Ave SE (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 3 ft 9 inches to the 10 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. Derrick Archuleta, Architectural & Planning Land Use Consultants, agent for New Mexico Real Estate Financial Solutions, property owner appeared and gave evidence in support of the application.

5. The subject property is regulated by Section 14-16-2-3(B)(2); Use and Development Standards, 14-16-2-3(B)(2), Table 2-3-3: R-1 Zone Dimension Standards.
6. The subject property is currently zoned R-1A.
7. The request is for a variance of 2,3 feet to the required 10 foot rear yard setback, where the existing setback is 7.7 feet.
8. All property owners within 100 feet of the subject property and the affected neighborhood association were notified.
9. San Jose Neighborhood Association is the affected neighborhood association.
10. The site is located at 407 Anderson Ave SE, between John Street and Broadway Blvd.
11. The property is 0.1653 acres in area.
12. There are two houses presently on one legal lot of record.
13. The existing house is non-conforming.
14. The subject lot is technically landlocked and is dependent on the adjacent lot to the south for access and parking.
15. The Applicant owns all lots in questions, and is presently in the process of replatting the properties as part of the DRB process.
16. This replatting will result in subjecting the subject property to enforcement of the rear yard setback.
17. These special circumstances were not self-imposed and would result in hardship due to these existing circumstances.
18. The existing house within current setback standards has not historically created any problems.
19. The existing underlying zone and land use reflects use appropriate to this area of the City.
20. Resolution of this technical legal dilemma will reflect the intent of public health, safety and welfare.
21. The existing houses have been on the property for several decades without any adverse impacts.
22. The standard for the majority of the houses in the surrounding community reflect one house per legal lot of record.
23. Infrastructure improvements will not be adversely impacted as a result of this variance.
24. Approval of the variance will not undermine the intent and purpose of the IDO or zone district when the residential use will be preserved.
25. Approval of the requested variance will be a part of resolving several issues that are creating hardship and difficulty for the property owner.
26. 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).
27. 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).
28. 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).
29. 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).

30. 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).
31. The proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
32. The Applicant has authority to pursue this Application.

DECISION:

APPROVAL of a variance of 3 ft 9 inches to the 10 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.



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Stan Harada, Esq.  
Zoning Hearing Examiner

cc: Zoning Enforcement  
ZHE File  
NM Real Estate Financial Solutions, 4116 Avenida La Rosolana NE, 87110  
Arch+Plan Land Use Consultants, PO Box 25911, 87125