



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

Anthony Radler requests a variance to allow an accessory building to occupy 12% more than the allowed 25% of the side and rear yards combined for Lot 24, Block 23, Perea Addn, located at 1201 Fruit Ave NW, zoned R-1A [Section 14-16-5-11(c)(3)(a)]

Special Exception No:..... **VA-2019-00129**
Project No: **Project# 2019-001442**
Hearing Date: 05-21-19
Closing of Public Record: 05-21-19
Date of Decision: 06-05-19

On the 21st day of May, 2019, Jason Radler, agent for property owner, Anthony Radler (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance to allow an accessory building to occupy 12% more than the allowed 25% of the side and rear yards combined (“Application”) upon the real property located at 1201 Fruit Ave NW (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance to allow an accessory building to occupy 12% more than the allowed 25% of the side and rear yards combined.
2. The request is for a variance from Development Standards 14-16-5-11(C)(3)(a): “Accessory buildings shall not be located in any required front setback and shall not occupy over 25 percent of the side and rear yards combined.”
3. 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.”*

4. 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).
5. Jason Radler, agent for Anthony Radler, property owner appeared and gave evidence in support of the application.
6. The request is for a variance from Development Standards 14-16-5-11(C)(3)(a): “Accessory buildings shall not be located in any required front setback and shall not occupy over 25 percent of the side and rear yards combined.”
7. The proposed accessory building will occupy 29.4 percent of the side and rear yards combined.
8. The proposed building will be constructed in a style which will maintain the historic character of the neighborhood.
9. All property owners within 100 feet of the subject property and the affected neighborhood association were notified.
10. Downtown Neighborhood Association is the affected neighborhood association.
11. The address of the subject property is 1201 Fruit Ave NW.
12. The subject property is within a character Protection Overlay Zone, the Downtown Neighborhood Area, CPO-3, and is regulated by Section 14-16-3-4(D).
13. The subject property is within a Historic Protection Overlay Zone, Fourth Ward, HPO-3, and is regulated by Section 14-16-3-5(H).
14. An e-mail from Leslie Naji, Senior Planner for Landmarks Commission, indicating no problems for the request, was submitted in support of the Application.
15. The subject property is currently zoned R-1A.
16. The proposed project is to construct a casita with an attached garage, separate from the subject primary historic building, in the rear and side yards.
17. The construction of a casita will maintain the historic integrity of the primary structure.
18. The Landmarks and Urban Conservation Commission (LUCC), reviewed the proposed design and has given approval to the project.
19. Approval of the request will allow applicant to add the accessory building and is the minimum necessary to maintain the historic character of the existing primary structure.
20. Transportation reported no objection to the request.
21. No one appeared in opposition to the Application.
22. 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).
23. 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).
24. 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).
25. 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).
26. 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).
27. The proper “Notice of Hearing” signage was posted for the required time period as required by Section 14-16-6-4(K)(3).

28. The Applicant has authority to pursue this Application.

DECISION:

APPROVAL of a variance to allow an accessory building to occupy 12% more than the allowed 25% of the side and rear yards combined.

APPEAL:

If you wish to appeal this decision, you must do so by June 20, 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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Jason Radler, 1201 Fruit Ave NW, 87102