



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

Ahmed A El-Emawy requests a variance of 5 ft to the required 10 ft side setback for Lot 1-P1, La Vista at Desert Ridge Trails, located at 7501 Esmail CT NE, zoned PD [Section 14-16-5]

Special Exception No:..... **VA-2019-00287**
Project No: **Project#2019-002808**
Hearing Date: 10-15-19
Closing of Public Record: 10-15-19
Date of Decision: 10-30-19

On the 15th day of October, 2019, Yolanda Montoya, agent for property owner Ahmed A El-Emawy (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 5 ft to the required 10 ft side setback (“Application”) upon the real property located at 7501 Esmail CT NE (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 5 feet to the required 10 foot 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. Yolanda Montoya, agent for Ahmed A. El-Emawy, property owner, appeared and gave evidence in support of the application.
5. The address of the subject property is 7501 Esmail Ct. NE.
6. The subject property is currently zoned PD.

7. The subject property is currently undeveloped.
8. The request is for a variance from Section 14-16-5-1(C)(1): ***DEVELOPMENT STANDARDS; Residential Zone District Table; Table 5-1-1: Residential Zone District Dimensional Standards; Setback Standards; Side, minimum.***
9. The required side yard setback on the street side of a corner lot in this development is 10-feet.
10. The interior side yard minimum is 5 feet.
11. All property owners within 100 feet of the subject property and the affected neighborhood association were notified.
12. Nor Este Neighborhood Association and District 4 Coalition of Neighborhood Associations are the affected neighborhood associations.
13. The neighborhood associations were notified by e-mail dated August 19, 2019.
14. No response, nor request for meeting has been submitted.
15. The proposed project is construction of a new single-family residence.
16. The subject lot is on the corner of Pinon Vista Ct. NE and Esmail Ct NE.
17. The lot is unusual as it fronts both streets, with the required side yard on the Pinon Vista side of the lot.
18. The subject lot is the only lot in the development on a corner with two front streets.
19. The subject lot is 50 feet wide, and applying both side yard requirements would reduce the usable land to 35 feet.
20. The required setbacks would create a lot much smaller than typical lots in the surrounding neighborhood.
21. There is an existing development wall on the Pinon Vista side of the subject property.
22. A site plan and accompanying photographs of the existing site were submitted in support of the Application.
23. Transportation issued a report indication of no opposition to the Application.
24. The subject lot is exceptionally shaped and unique in form compared to other lots in the surrounding neighborhood.
25. The lot is smaller than the other 5 lots on the block.
26. Abdel-Rahman El-Emawy, 6716 Beck Dr. NE, appeared and gave testimony in support of the Application.
27. Omar El-Emawy, 7132 Paese Pl. NW, appeared and gave testimony in support of the Application.
28. 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).
29. The adjacent property has its primary structure 5 feet from each side yard property line.
30. The adjacent neighbor expressed support for the request, and there will be no adverse impact to the public safety, health or welfare.
31. 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).
32. There is no evidence of adverse impacts on surrounding properties or infrastructure improvements in the vicinity.

33. 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).
34. The request will protect the quality and character of surrounding residential neighborhood; provide for the efficient administration of land use and development regulations in the City; protect the health, safety and welfare of the public; and ensure development in the City is consistent with the spirit and intent of the IDO.
35. 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).
36. The variance will allow Applicants to avoid the extraordinary expense and practical hardship of attempting to design a much smaller house to fit the required side yard setbacks.
37. 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).
38. The proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
39. The Applicant has authority to pursue this Application.

CONCLUSIONS OF LAW:

The criteria within Section 14-16-6-6(N)(3)(a) of the Albuquerque Zoning Code are satisfied.

DECISION:

APPROVAL of a variance of 5 feet to the required 10 feet side yard setback.

APPEAL:

If you wish to appeal this decision, you must do so by November 14, 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: ZHE File
Zoning Enforcement
Ahmed A El-Emawy, 7132 Paese Pl. NW, 87114
Yolanda Montoya, 8724 Alameda Park DR NE Suite G, 87113
Abdel-Rahman El-Emawy, 6716 Beck Dr. NE, 87109
Omar El-Emawy, 7132 Paese Pl. NW, 87114