



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

Ivan Gallegos (Agent, JAG Planning & Zoning) request a variance of 2.3 feet to the allowed encroachment of 3 feet from the side lot line for a shade structure for Lot 13, Block 9, Knolls of Paradise Hills Unit 2, located 9833 Benton ST NW, zoned R-1B [Section 14-16-5-1(G)]

Special Exception No:..... **VA-2020-00384**  
Project No: ..... **Project#2020-004662**  
Hearing Date: ..... 12-15-20  
Closing of Public Record: ..... 12-15-20  
Date of Decision: ..... 12-30-20

On the 15th day of December, 2020, JAG Planning & Zoning, agent for property owner Ivan Gallegos (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 2.3 feet to the allowed encroachment of 3 feet from the side lot line for a shade structure (“Application”) upon the real property located at 9833 Benton ST NW (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 2.3 feet to the allowed encroachment of 3 feet from the side lot line for a shade structure.
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. 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. Agent 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 subject property is currently zoned R-1B.
7. Based on evidence submitted by or on behalf of Applicant, it appears that 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). Specifically, applicant testified that the topography, surroundings and location characteristics of the site are unique and merit the requested variance.
8. Based on evidence submitted by or on behalf of Applicant, 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). Specifically, evidence was submitted supporting that the Applicant intends to use the property in a manner that is consistent with the IDO and the Development Process Manual (DPM).
9. Based on evidence submitted by or on behalf of Applicant, 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). Specifically, the proposed structure is designed to be in harmony and consistency with what currently exists in the neighborhood, which was supported by photographic evidence and oral testimony.
10. Based on evidence submitted by or on behalf of Applicant, 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). Specifically, Applicant presented evidence that the intent of IDO will still be met in that the subject site will continue the existing use and the proposed structure would merely add to the safety and usability of the subject property.
11. Based on evidence submitted by or on behalf of Applicant, 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). Specifically, Applicant testified that any lower setback would be ineffective, because the structure would obstruct access to the backyard with any smaller setback. Thus, the applicant is not requesting more than what is minimally necessary for a variance.
12. City Transportation submitted a report stating no objection.
13. The proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
14. The Applicant has authority to pursue this Application.

DECISION:

APPROVAL of a variance of 2.3 feet to the allowed encroachment of 3 feet from the side lot line for a shade structure.

APPEAL:

If you wish to appeal this decision, you must do so by January 15, 2021 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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Zoning Hearing Examiner

cc:

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Zoning Enforcement  
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