



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

Integrated Solar Technologies & Manufacturing (Agent, James Muir) requests a variance of 10 ft to the required 15 ft rear yard setback for Lot A9, Block 4, Vista Magnifica, located at 1632 Cliffside DR NW, zoned R-T [Section 14-16-5-1(C)]

Special Exception No:..... **VA-2020-00403**
Project No: **Project#2020-004682**
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, James Muir, agent for property owner Integrated Solar Technologies & Manufacturing (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a 10 ft to the required 15 ft rear yard setback (“Application”) upon the real property located at 1632 Cliffside DR NW (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 10 ft to the required 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 has authority to pursue this Application.
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. Applicant appeared and gave evidence in support of the application.

6. All property owners within 100 feet of the subject property and the affected neighborhood association were notified. Several neighbors submitted evidence and testimony in opposition to the Application on various grounds.
7. The subject property is currently zoned R-T.
8. Applicant has not established 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). Applicant asserted in written submittals and oral testimony that the special circumstances justifying the variance are the lack of space to grow fresh produce in the backyard of the subject property. However, these conditions appear to apply generally to properties adjacent to and surrounding the Subject Property, rather than uniquely to the subject property. Further, the lack of backyard space is not “created by natural causes or government action for which no compensation was paid,” as would be required by the IDO. Instead, the lack of backyard space is a manmade problem caused by the construction of the current improvements in their current location on the subject property, which is a characteristic shared with surrounding properties. As such, lack of backyard space in this situation does not satisfy the requirement of special circumstances under the IDO.
9. Given that the required element of special circumstances has not been satisfied, the variance must be denied, and it is therefore unnecessary to examine any other element required to establish a variance.

DECISION:

DENIAL of a variance of 10 ft to the required 15 ft rear yard setback.

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.



Robert Lucero, Esq.
Zoning Hearing Examiner

cc:

ZHE File
Zoning Enforcement
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