



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

Tom and Sherry Pennington request a variance of 9% to the required 10% of the net lot area landscaping requirement for Lot G, Block 4, Anderson Addn, located at 1512 4TH ST NW, zoned MX-M [Section 14-16-5-6(c)(2)(b)]

Special Exception No:..... **VA-2020-00001**
Project No: **Project#2019-003030**
Hearing Date: 02-18-20
Closing of Public Record: 02-18-20
Date of Decision: 03-04-20

On the 18th day of February, 2020, property owners Tom and Sherry Pennington (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 9% to the required 10% of the net lot area landscaping requirement (“Application”) upon the real property located at 1512 4TH ST NW (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 9% to the required 10% of the net lot area landscaping requirement.
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. Agent for property owner 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 MX-M.
7. Based on evidence submitted by or on behalf of Applicant, 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, the need for the variance arose when vagrants started a fire that burned-down a portion of the property, which had been in existence decades before the passage of the IDO. These facts create a special circumstance that does not apply generally to other property in the same zone district and vicinity of the subject site. No evidence to the contrary was presented.
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, Agent submitted evidence that the proposed variance would allow Applicant to rebuild after a fire destroyed portions of the property. Developing this property will contribute to increased public safety, health, and welfare for the surrounding community because a vacant lot will be now used and maintained by a successful local business that provides a needed service to the community and general public. No evidence to the contrary was presented.
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, Agent submitted evidence that the variance requested will merely allow reconstruction of the site in a manner in harmony with what was there before the fire and in harmony with surrounding properties and the larger area. No impact on infrastructure would exist. No evidence to the contrary was presented.
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 construction that the variance would allow would be consistent with the IDO and other City ordinances. No evidence to the contrary was presented.
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, evidence was presented that the Applicants would have to eliminate a substantial and impractical amount of the rebuild plans without the variance. Thus, the applicants are not requesting more than what is minimally necessary for a variance. No evidence to the contrary was presented.
12. The proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
13. The Applicant has authority to pursue this Application.

DECISION:

APPROVAL of a variance of 9% to the required 10% of the net lot area landscaping requirement.

APPEAL:

If you wish to appeal this decision, you must do so by March 19, 2020 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
Tom & Sherry Pennington, 1512 4th ST NW, 87102