



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

Isidor Gallegos (Agent, Arch+Plan Land Use Consultants) request a variance of 0.0777 acres to allow a lot larger than the allowable contextual standards for Lot 14, Floral Gardens, located at 2454 Rose AVE NW, zoned R-1B [Section 14-16-5-1(C)(2)(b)]

Special Exception No:..... **VA-2020-00078**
Project No: **Project#2020-002609**
Hearing Date: 05-19-20
Closing of Public Record: 05-19-20
Date of Decision: 06-03-20

On the 19th day of May, 2020, Arch+Plan Land Use Consultants, agent for property owner Isidor Gallegos (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 0.0777 acres to allow a lot larger than the allowable contextual standards (“Application”) upon the real property located at 2454 Rose AVE NW (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 0.0777 acres to allow a lot larger than the allowable contextual standards.
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 R-1B.
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 area of the subject site contains a mixture of lot sizes, some of which could meet the lot size requirements with a platting action and other lots that do not meet the new minimum lot size requirements. Since the area of the subject site does not have a standardized development pattern with consistent lot size area or width, the current lot size of the subject site creates 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 testified that, if granted approval, the Applicant intends to replat the property in a manner that is consistent with the IDO and the Development Process Manual (DPM), which requires proper drainage and vehicular access onto the subject site. The Applicant intends to develop the newly platted lots in compliance with all applicable regulations and codes. 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, the existing configuration of the site, once divided by the replat, will remain consistent with what currently exists and will not create added impacts on infrastructure. 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 intent of IDO will still be met in that the subject site will still be developed as residential property and will still allow the site to meet the current setback and building height requirements that are outlined in the site's applicable zone district. 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 did explore the opportunity to have all newly platted lots meet the minimum lot size requirement, but that would have required division of the property into more than two lots. However, division of the existing lot into more than the proposed two lots would be impractical. 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.
14. The to-be-platted lot for which the variance is requested is described as proposed "Lot 14-A."

DECISION:

APPROVAL of a variance of 0.0777 acres to allow a lot larger than the allowable contextual standards for proposed newly platted lot to be described as proposed "Lot 14-A."

APPEAL:

If you wish to appeal this decision, you must do so by June 18, 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.



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cc:

ZHE File
Zoning Enforcement
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