



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

MARIA ELENA MAESTAS requests a special exception to Section 14-16-2-6(E)(5)(a): a VARIANCE request of 10' to the required 15' rear yard setback to allow a proposed new construction for all or a portion of Lot 38-P1, CANDELARIA VILLAGE zoned R-1, located on 1459 VALLE LA NW (G-13)

Special Exception No: **14ZHE-80198**
Project No:..... **Project# 1010199**
Hearing Date:..... February 20, 2015
Closing of Public Record:..... February 20, 2015
Date of Decision: 03-05-15

On the 20th day of February, 2015 (hereinafter "**Hearing**") MARIA ELENA MAESTAS (hereinafter "**Applicant**") appeared before the Zoning Hearing Examiner (hereinafter "**ZHE**") requesting a Variance of 10' to the required 15' rear yard setback to allow a proposed new construction (hereinafter "**Application**") upon the real property located at 1459 VALLE LA NW ("**Subject Property**"). Below are the findings of facts:

FINDINGS:

1. Applicant is requesting a Variance of 10' to the required 15' rear yard setback to allow a proposed new construction.
2. The Applicant met with the neighborhood association and voluntarily rescinded this Application by publicly testifying at the Hearing and providing those instructions to the ZHE.
3. The ZHE honored the Applicant's request and has rescinded the Application.

DECISION:

RESCIND the APPLICATION.

If you wish to appeal this decision, you may do so in the manner described below:

Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, Planning Application Counter located on the west side of the lobby. **Please present this letter of notification when filing an appeal.** When an application is withdrawn, the fee shall not be refunded.

An appeal shall be heard by the Board of Appeals within 45 days of the appeal period and concluded within 75 days of the appeal period. The Planning Division shall give written notice of an appeal, together with a notice of the date, time and

place of the hearing to the applicant, a representative of the opponents, if any are known, and the appellant.

Please note that pursuant to Section 14.16.4.4.(B), of the City of Albuquerque Comprehensive Zoning Code, you must demonstrate that you have legal standing to file an appeal as defined.

You will receive notice if any other person files an appeal. If there is no appeal, you can receive building permits any time after the appeal deadline quoted above, provided all conditions imposed at the time of approval have been met. However, the Zoning Hearing Examiner may allow issuance of building permits if the public hearing produces no objection of any kind to the approval of an application. To receive this approval, the applicant agrees in writing to return the building permit or occupation tax number.

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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NOTIFICATION OF DECISION

MARIA ELENA MAESTAS requests a special exception to Section 14-16-2-6(D)(2)(a)(2): a VARIANCE request of 8' to the required 50' width to allow a proposed lot for all or a portion of Lot 38-P1, CANDELARIA VILLAGE zoned R-1, located on 1459 VALLE LA NW (G-13)

Special Exception No: **14ZHE-80199**
Project No:..... **Project# 1010199**
Hearing Date:..... February 20, 2015
Closing of Public Record:..... February 20, 2015
Date of Decision: 03-05-15

On the 20th day of February, 2015 (hereinafter “**Hearing**”) MARIA ELENA MAESTAS (hereinafter “**Applicant**”) appeared before the Zoning Hearing Examiner (hereinafter “**ZHE**”) requesting a Variance of 8' to the required 50' width to allow a proposed lot (hereinafter “**Application**”) upon the real property located at 1459 VALLE LA NW (“**Subject Property**”). Below are the findings of facts:

FINDINGS:

4. Applicant is requesting a Variance of 8' to the required 50' width to allow a proposed lot.
2. The City of Albuquerque Zoning Code of Ordinances Section § 14-16-4-2 (C) (2) “SPECIAL EXCEPTIONS – VARIANCE” reads in part: “A variance application shall be approved by the Zoning Hearing Examiner, if and only if, the Zoning Hearing Examiner finds all of the following:
(a) The application is not contrary to the public interest or injurious to the community, or to property or improvements in the vicinity;
(b) There are special circumstances applicable to the subject property which 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;
(c) Such special circumstances were not self-imposed and create an unnecessary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the property that need not be endured to achieve the intent and purpose of the Zoning Code (§14-16-1-3) and the applicable zoning district; and
(d) Substantial justice is done.”
3. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that the Application is not going to be: (i) contrary to the public interest, (ii) injurious to the community; or (iii) injurious to the property/improvements located in the nearby vicinity of the Subject Property. Specifically, the Applicant provided testimony a 42' wide lot (as opposed to a 50' lot) is not injurious to the community because the 8' difference in lot width will not damage the quality of the subdivision or negatively impact any of the neighboring

parcels [as required pursuant to Section § 14-16-4-2 (C) (2) (a)]. Further, the Application and testimony of the Applicant at the Hearing suggest that there is no neighborhood opposition to the Application. There was neighborhood opposition to the 10' setback to the 15' rear yard setback application that was later RESCINDED by the Applicant, however there is no evidence in the file that the neighborhood opposed the 8' variance to the width of the lot (as it is not contained in the letter from Amy Costen, of the Board of Directors of the Candelaria Homeowners Association (dated February 9, 2015 – see letter in the file).

4. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that there are “special circumstances” applicable to the Subject Property which do not apply generally to other property in the same zone and vicinity. Specifically, the Applicant provided testimony that the unusual L-shaped property constitutes a special circumstance on the property [as required pursuant to Section § 14-16-4-2 (C) (2) (b)]. The ZHE agrees that shape of the parcel is irregular and “special” to this neighborhood. The ZHE also finds that the entrance to this L-shaped lot is not facing the internal streets of the Candelaria Village HOA streets and therefore has a unique entrance outside the neighborhood association.
5. The Applicant testified that this parcel will be subdivided through the DRB, but she was first required to get this Application resolved prior to finalizing the plat application/submittal. The ZHE was provided a copy of the DRB Agenda from April 13, 2011 – Sketch Plat application review and comment (Project Number: 1008361) – See File for copy of Agenda.
6. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that the special circumstances presented hereinabove were not “self-imposed”, and that those special circumstances create an unnecessary hardship upon the Applicant. Specifically, the Applicant provided testimony that if she were required to have a 50' wide lot width that she would not be able to access this portion of the Lot with an “entrance driveway” and therefore she would be precluded from subdividing the parcel from 1 lot, into 2 lots, which constitutes an “*unjustified limitation on the reasonable use of the Subject Property*” [as required pursuant to Section § 14-16-4-2 (C) (2) (c)]
7. Mr. Lowe authored an opposition letter that is in the file. This opposition relates primarily to the rear yard setback application that was later rescinded by the Applicant.
8. The property is within the North Valley Area Plan and is Established Urban in the Comp. Plan (designation).
9. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that substantial justice will be done if this Application is approved. [as required pursuant to Section § 14-16-4-2 (C) (2) (d)]
10. Applicant testified at the Hearing that the yellow “Notice of Hearing” signs were posted for the required time period as articulated within City of Albuquerque Code of Ordinances § 14-16-4-2 (B) (4).

CONCLUSIONS OF LAW:

The Applicant has met their burden of submitting an Application that provides evidence that satisfies the elements required within §14-16-4-2 (C) (2) of the Albuquerque Zoning Code.

DECISION:

APPROVAL WITH CONDITIONS of a VARIANCE of 8' to the required 50' width to allow a proposed lot.

CONDITIONS OF APPROVAL:

- A. The Applicant shall comply with all the comments and conditions imposed by the Development Review Board as it relates to the subdivision application for this L-shaped Subject Property.

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Please note that pursuant to Section 14. 16. 4. 4. (B), of the City of Albuquerque Comprehensive Zoning Code, you must demonstrate that you have legal standing to file an appeal as defined.

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