



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

SUPERIOR LAND INVESTMENTS LLC (JAMES STROZIER, AGENT) requests a special exception to Section 14-16-2-14(B) and 14-16-2-9(E)(1) : a VARIANCE of 5 ft to the 15 ft front setback required on proposed lots 5 & 6 for all or a portion of Lot 31, Block 11, Tract(s) 1, North Albuquerque Acres Unit 3 zoned R-D 7DU/A, located on 7621 GLENDALE AV NE (B-19)

Special Exception No:..... **16ZHE-80221**
Project No:..... **Project# 1010963**
Hearing Date:..... 10-18-16
Closing of Public Record:..... 10-18-16
Date of Decision: 11-02-16

On the 18th day of October, 2016, JAMES STROZIER (“Agent”) acting as agent on behalf of the property owner SUPERIOR LAND INVESTMENTS LLC (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 5 ft to the 15 ft front setback required on proposed lots 5 & 6 (“Application”) upon the real property located at 7621 GLENDALE AV NE (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 5 ft to the 15 ft front setback required on proposed lots 5 & 6.
2. The City of Albuquerque Zoning Code of Ordinances Section 14-16-4-2 (C)(2) (Special Exceptions – Variance) reads: “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 Applicant bears the burden of ensuring there is evidence in the record supporting a finding that the above criteria are met under Section 14-16-4-2(C).

4. The ZHE finds that Application is not: (i) contrary to the public interest, (ii) injurious to the community; or (iii) injurious to the property or improvements located in the vicinity as required by Section 14-16-4-2 (C)(2)(a).
5. The Applicant presents a persuasive analysis of the proposed project in the context of the relevant planning documents. Here, the ZHE finds that the proposed setback reduction will not interfere with the views, light or access of other residents or impact neighborhood character or security. There is no resultant increase in intensity of use, noise or traffic. The site plan as proposed is appropriate in the context of the surrounding development.
6. Particularly relevant here is the broad series of agreements with surrounding landowners and residents as to how the Subject Property will be built out, arrived at primarily through the zone map amendment process. The Applicant describes the requested variance as needed to effectuate those agreements.
7. Additionally, the setback variance will result in the home on the Subject Property being located closer to the internal circulation street in this small development, and thus farther away from existing residences.
8. There was some objection regarding the form of structure to be built on Lot #6 of the Subject Property, with a request that Lot #6 be limited to one story construction (it is already under a requirement to limit the second story to 50% of the first story).
9. The requested variance will only have the effect of moving the structure on Lot #6 farther away from the abutting parcels. Thus, there is no impact or injury presented by such construction that has a reasonable nexus to limiting the height of construction on that parcel. Although the ZHE is permitted to “impose conditions necessary to meet the stated criteria for granting special exceptions” (Zoning Hearing Examiner Rules of Procedure at D(2)), here the requested condition does not relate to the zoning variance criteria or impact of the variance.
10. The ZHE finds that 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, as required by Section 14-16-4-2(C)(2)(b).
11. Specifically, the ZHE finds that due to its unique location and intended infill use (the Subject Property is an abandoned drainage pond), the combination of Wyoming Blvd. access corridor requirements and Glendale Avenue subdivision access restraints renders the Subject Property in a unique situation subject to special circumstances.
12. The ZHE finds that 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 district, as required by Section 14-16-4-2(C)(2)(c).
13. Specifically, the ZHE finds that the special circumstances are faced by the Applicant in attempting to build out the Subject Property to a reasonable density consistent with and appropriate to the surrounding community, resulting in an unjustified limitation.
14. The ZHE finds that substantial justice will be done if this Application is approved, as required pursuant to Section 14-16-4-2 (C)(2)(d).

15. The ZHE finds that the proper “Notice of Hearing” signage was posted for the required time period as required by Section 14-16-4-2(B)(4).
16. The ZHE finds that the Applicant has authority to pursue this Application.
17. Finally, although the Applicant requests a statement from the ZHE confirming that the special exception is considered utilized and vested at the time of platting action, that is a legal conclusion outside of the scope of the ZHE’s authority.

CONCLUSIONS OF LAW:

The criteria within Section 14-16-4-2(C)(2) of the Albuquerque Zoning Code are satisfied.

DECISION:

APPROVAL of a variance of 5 ft to the 15 ft front setback required on proposed lots 5 & 6.

If you wish to appeal this decision, you must do so by November 17, 2016, in the manner described below. A non-refundable filing fee will be calculated at the Planning Department’s Land Development Coordination counter and is required at the time the Appeal is filed.

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 appellants.

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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