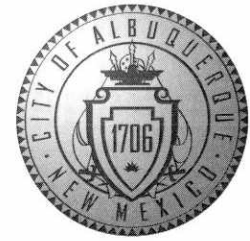


CITY OF ALBUQUERQUE



Planning Department

Suzanne Lubar, Director

Urban Design & Development Division

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CITY OF ALBUQUERQUE BOARD OF APPEALS NOTIFICATION OF DECISION

Sonny D. Sun (Agent) and Mr. Ming Jia Qian appeals the Zoning Hearing Examiner’s (ZHE) denial of a special exception pursuant to Zoning Code §14-16-4-2(C)(2), Variance Criteria: a variance of 806 square feet (sf) to the required 5,000 sf [Zoning Code §14-16-2-6(D)(2)(a)(1)] to allow for a future, new lot for all or a portion of 1 and Lot 2 (excluding the west 50 feet), Eliseo Sanchez Subdivision, containing approximately 0.21 acre and located at 2425 Dora Ave. NW (J-12).

Appeal No:..... 17BOA-20004
Special Exception No: 17ZHE-80064
Project No:..... 1011196
Hearing Date:..... 8/01/2017

In the matter of **17BOA-20004**, the Zoning Board of Appeals (BOA) voted to **DENY** the Appeal, **thereby AFFIRMING** the Zoning Hearing Examiner’s (ZHE’s) decision based on the following findings:

FINDINGS:

1. This is an APPEAL of the Zoning Hearing Examiner’s (ZHE) DENIAL of a SPECIAL EXCEPTION pursuant to Zoning Code §14-16-4-2(C)(2), Variance Criteria: a variance of 806 square feet (sf) to the required 5,000 sf [Zoning Code §14-16-2-6(D)(2)(a)(1)] to allow for a future, new lot (the “subject request”).
2. The subject site is described as Lot 1 and Lot 2 (excluding the west 50 feet), Eliseo Sanchez Subdivision, containing approximately 0.21 acre and located at 2425 Dora Ave. NW (the “subject property”). The subject property is within the boundaries of the Old Town Sector Development Plan.
3. The subject property is located in the Old Town area, south of Mountain Rd. and just east of the Alameda Drain. A single-family home, in disrepair, is sited on the northern portion of the subject property. The accessory structure was recently town down. The applicant owns the subject property.
4. The Albuquerque/Bernalillo County Comprehensive Plan, the Old Town Sector Development Plan, and the City of Albuquerque Zoning Code are incorporated herein by reference and made part of the record for all purposes.
5. The subject site is zoned R-1 Residential zone [Zoning Code §14-16-2-6]. A single-family home exists on the subject property.

6. Pursuant to Subsection (D)(1)(a), the minimum lot size in the R-1 zone is 5,000 sf. The appellant requested a variance of 806 sf to the 5,000 sf requirement to allow for the subject property to be replatted into two lots at a future time. One lot would be 4,194 sf and the other lot would be 5,396 sf (Record at 36).
7. Zoning Code §14-16-4-2(C)(2), Special Exceptions, states that a variance shall be approved by the ZHE, if and only if, the ZHE 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.
8. The ZHE found that the applicant has not met the burden of ensuring that there is evidence in the record to support a finding that the Variance Criteria (see Finding #7 herein) are met. The ZHE found that the application is contrary to the public interest, injurious to the community, or injurious to the property or improvements located in the vicinity as required by Zoning Code §14-16-4-2(C)(2)(a).
9. The ZHE also found that no special circumstances apply to the subject property that do not apply generally to other property in the same zone and vicinity [§14-16-4-2(C)(2)(b)], such as size, shape, topography, location, surroundings, or physical characteristics created by natural forces or government action for which no compensation was paid, and that substantial justice will be done if the variance is denied [§14-16-4-2(C)(2)(b)].
10. There is disputed testimony in the record whether or not compensation was paid for a portion of the lot transferred to the City of Albuquerque in the 1950s (ZHE Finding #10, Record at 17).
11. The ZHE found that the record lacks evidence to demonstrate that the size and location of the lot render it subject to special circumstances. Therefore, he concluded that special circumstances do not apply to the subject property.
12. Zoning Code Section §14-16-4-4(B)(4) states that an appellant to a special exception action shall clearly articulate the reasons for the appeal by specifically citing and explaining one or more alleged errors of the ZHE in rendering his decision:
 - (a) in applying adopted city plans, policies and ordinances in arriving at his decision;
 - (b) in the appealed action or decision, including its stated facts; and
 - (c) in acting arbitrarily or capriciously or manifestly abusive of discretion.

The appellant states that facts were missing from the ZHE's findings, and that the decision contains misleading statements and subjective assumptions, though he does not specifically refer to any of the above reasons for appeal in the June 14, 2017 letter. The appellant believes that the subject property has always been a "double lot" and that no compensation was paid for it in 1948 when a portion of it was transferred to the City. The appellant also believes that the ZHE erred in concluding that construction of another home on the subject property, which is an oversized corner lot, would be injurious to the neighborhood. It would not generate more traffic, and use of the existing driveways would not impact the area (Record at 3).

13. At the May 16, 2017 ZHE hearing, the appellant testified that the subject property was purchased approximately a year ago. A neighbor testified that the property has been a "problem property" for the neighborhood and that the existing, substandard home operated as a meth house and attracted many homeless people. He also stated that the three-way intersection is problematic due to poor visibility, and that existing homes are already too close together and more homes would create more congestion. He is concerned that the subject property continues to look terrible due to the existing, substandard dwelling and amount of trash in the yard (Record at 20).
14. The size and location of the existing residence shown on the exhibit of the subject property (Record at 11 and 36) do not correspond to what is shown in the City's GIS system. Also, based on the exhibit, it is not possible to determine if a second home would be feasible to construct after a future subdivision of the lot. The setbacks of the R-1 zone for a corner lot would have to be met for any new construction. The scale of the drawing is not indicated.
15. Special circumstances do not apply to the subject property that do not apply generally to other property in the same zone and vicinity [§14-16-4-2(C)(2)(b)]. The neighborhood consists of lots of comparable size, shape, and topography. Properties on all sides of the subject property are zoned R-1 Residential Zone, and are subject to the regulations of the R-1 zone, as is the subject property.
16. The applicant stated that a portion of the original owner's lot was used to create Panmunjon St. (Record at 21). This does not constitute a special circumstance because other property owners along Panmunjon St., particularly the property adjacent north of the subject property, also had to have given property so that the street could be created.
17. The BOA finds that the applicant had not met the burden of providing evidence (both oral testimony and written material) to establish that the special circumstances presented herein were not self-imposed, and that those special circumstances create an unnecessary hardship upon the applicant [§14-16-4-2(C)(2)(c)].
18. The BOA finds that the applicant had not met the burden of providing evidence (both oral testimony and written material) to establish that substantial justice will be done if the application is approved [§14-16-4-2(C)(2)(d)].
19. Based on these findings, the Zoning Board of Appeals concludes that the decision of the ZHE in denying the variance request was CORRECT. Therefore, the appeal is DENIED and the decision of the ZHE is AFFIRMED.

If you wish to appeal this decision, you must do so by **August 16, 2017**, 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 TO THE CITY COUNCIL: Any person aggrieved with any determination of the Board of Appeals acting under this ordinance may file an appeal to the City Council by submitting written application on the Planning Department form to the Planning Department within 15 days of the Board of Appeals decision. The date the determination in question is issued is not included in the 15-day period for filing an appeal, and if the fifteenth day falls on Saturday, Sunday or holiday as listed in the Merit System Ordinance, the next working day is considered as the deadline for the filing of the Appeal.

The City Council may decline to hear the Appeal if it finds that all City plans, policies and ordinances have been properly followed. If it decides that all City plans, policies, and ordinances have not been properly followed, it shall hear the Appeal. Such an appeal, if heard, shall be opened within 60 days of the expiration of the appeal period.

Should you have any questions regarding this action, please call our office at (505) 924-3860.

Catalina Lehner

for Suzanne Lubar, Planning Director

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