



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

PAUL P BENNETT requests a special exception to Section 14-16-2-14(D) and 14-16-2-6(E)(4)(a) : a VARIANCE of 3 ft to the required 5 ft side yard setback for all or a portion of Lot 18-P1, Paseo De Estrella zoned R-D, located on 1123 DIAMONDBACK DR NE (D-16)

Special Exception No:..... **17ZHE-80101**
Project No:..... **Project# 1011237**
Hearing Date:..... 06-20-17
Closing of Public Record:..... 06-20-17
Date of Decision: 07-05-17

On the 20th day of June, 2017, PAUL P BENNETT (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 3 ft to the required 5 ft side yard setback (“Application”) upon the real property located at 1123 DIAMONDBACK DR NE (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 3 ft to the required 5 ft side yard setback.
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. Specifically, the ZHE finds that Applicant requests the variance to maintain an elevated playhouse/shade structure on the side of the home.

6. The playhouse does not appear to block light, views or access to any other property in the vicinity, nor does it change the intensity or nature of the use of the Subject Property.
7. The structure is substantially screened by mature landscaping.
8. The playhouse is attractively and appropriately designed, and Applicant explains that, as a builder, he will ensure that it is appropriately constructed.
9. The playhouse is elevated, both to provide additional shade to the home and because of limited ground space available on the lot.
10. A neighbor, Shelley Mund, appeared to seek information about the Application and, having received the desired information, informed the ZHE that she was not in opposition to the Application.
11. The Applicant informed the ZHE that the abutting neighbors on the affected side of the Subject Property were not in opposition to the Application.
12. No negative comments were received prior to the hearing, and no one appeared at the hearing to speak in opposition to the Application.
13. The ZHE finds no prohibition in either the Comprehensive Plan's regulations for the Developing Urban area or the North Valley Area SDP.
14. 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).
15. The ZHE finds that the size and shape of the Subject Property constitutes special circumstances. Specifically, the lot can be best described as a dog-legged pie or funnel shape. That is, it is very narrow in the front, allowing for little more than the width of the driveway, gradually increasing in width to maybe 40% of its depth, at which point it angles north and continues gradually widening, up to a width of 80 feet in the rear, abutting Vista del Norte Drive NE.
16. The size and shape of the Subject Property, although they are somewhat similar to the property immediately abutting it to the East, are clearly not circumstances that apply to other property in the same zone and vicinity, as determined by reference to the Zone Atlas, D-16-Z.
17. In addition to the size and shape constituting special circumstances, the location and size of the home on the Subject Property significantly impacts the utility of the remainder of the lot for reasonable, small residential structures such as the proposed playhouse.
18. 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).
19. Specifically, the ZHE finds that Applicant had no responsibility for creating the size or shape of the Subject Property, or the size and location of the house on the property and in fact paid extra with the eventually frustrated intention of purchasing a lot with a reasonably sized back yard.

20. Due to the very narrow front yard the house was necessarily pushed toward the back of the lot.
21. Applicants testified that, contrary to being a self-imposed condition, they were misled by their builder as to the size of the rear yard, which would be the logical location of a playhouse.
22. The ZHE finds that this combination of physical attributes does present an unnecessary hardship which is correctable by allowing the requested variance.
23. 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).
24. 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).
25. The ZHE finds that the Applicant has authority to pursue this Application.

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 3 ft to the required 5 ft side yard setback.

If you wish to appeal this decision, you must do so by July 20, 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 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.



Christopher L. Graeser, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
stonewash1@aol.com
shellymund@yahoo.com
vistadelnorte@me.com