Adrian Oglesby requests a variance of 5 ft to the required 10 ft side yard setback for Lot 51, MRGCD MAP 35, located at 2103 Los Luceros RD NW, zoned R-1A [Section 14-16-5-1-(C)]

Special Exception No:....... VA-2019-00088
Project No: .................... Project# 2019-002186
Hearing Date: ................... 04-16-19
Closing of Public Record: ........ 04-16-19
Date of Decision: ............... 05-01-19

On the 16th day of April, 2019, property owner Adrian Oglesby (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 5 ft to the required 10 ft side yard setback (“Application”) upon the real property located at 2103 Los Luceros RD NW (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 5 ft to the required 10 ft side yard setback.
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. Tyson Parker, agent for Adrian Oglesby, property owner appeared and gave evidence in support of the application.
5. The subject property is currently zoned R-A.
6. The subject property previous zone district was R-A2.
7. The subject property is located in the Los Duranes neighborhood and is within Character Protection Overlay, CPO-6.
8. The CPO-6 standards apply to the subject property and are contained in Table 5-1-1.
9. The request is for a variance of 5 feet to the 10 foot minimum side yard setback in the standards to the north side yard of the subject property.
10. The subject address is 2103 Los Luceros Rd. NW.
11. The proposed project is to build an addition to the primary residence.
12. A site plan, plus elevations were submitted in support of the Application.
13. Photographs of the existing primary structure were submitted in support of the Application.
14. The proposed addition was in compliance with the existing standards for the previous zone district, which were changed by the zone change designated by the enactment of the IDO, requiring this request for a variance from the new standard.
15. The subject property was the original Los Duranes house.
16. The subject property is a long and narrow tract of land.
17. The subject lot is less than 50 feet wide.
18. The property was originally wider, however, Carlotta Road was widened in the past and this action trimmed the width of the lot.
19. The owner has a growing family and needs to expand the existing primary residence to accommodate this growth.
20. The proposed addition is 1,147 sq. feet, added to the existing house of 1,215 square feet.
21. The resulting rear yard setback will be 82 feet-3/4 inches to the standard of 25 feet minimum rear yard setback.
22. The south side-yard setback will be 18 feet-6 1/4 inches to the standard of 10 feet minimum side yard setback.
23. The proposed addition is designed to respect the privacy of the closet adjacent neighbor to the north.
24. There are minimal number of windows in the north façade.
25. The existing primary building is 40 feet away from the building of the adjacent neighbor.
26. The proposed addition will be located to the west and will be 60 feet away from the building.
27. The proposed addition is in compliance with the IDO height restriction.
28. All property owners within 100 feet of the subject property and the affected neighborhood association were notified.
29. Los Duranes Neighborhood Association is the affected neighborhood association.
30. The neighborhood association is taking no position on the Application.
31. The adjacent neighbor to the south has verbally expressed support of the Application.
32. 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).
33. 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).
34. 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).
35. 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).
36. 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).
37. The proper “Notice of Hearing” signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
38. The Applicant has authority to pursue this Application.

**DECISION:**

APPROVAL of a variance of 5 ft to the required 10 ft side yard setback.

**APPEAL:**

If you wish to appeal this decision, you must do so by May 16, 2019 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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Stan Harada, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
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