



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

Patricia Lopez requests a variance of 3 ft to the allowed encroachment of 3 ft from side lot line for a shade structure for Lot A1, La Vida Nueva Replat of TRC, located at 219 La Vida De Jean SW, zoned R-T [Section 14-16-5-1-F]

Special Exception No:..... **VA-2019-00205**
Project No: **Project#2019-002520**
Hearing Date: 08-20-19
Closing of Public Record: 08-20-19
Date of Decision: 09-04-19

On the 20th day of August, 2019, property owner Patricia Lopez (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 3 ft to the allowed encroachment of 3 ft from side lot line for a shade structure (“Application”) upon the real property located at 219 La Vida De Jean SW (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 3 ft to the allowed encroachment of 3 ft from side lot line for a shade structure.
2. The request is for a variance from 14-16-5-1: *Development Standards; Dimensional Standards; Table 5-1-4: Allowed Exceptions and Encroachments; (Shade Structure for low-density residential development).*
3. Table reads in pertinent part:
“Conditions or limits:
May encroach into a required side or rear setback, but not closer than 3 ft. from any lot line.
No more than 50% of rear yard may be covered by a roof.
No wall to support the structure may be constructed in any setback area.”
4. 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.”

5. 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).
6. Patricia Lopez, property owner appeared and gave evidence in support of the application.
7. Louis Ollivier, a New Mexico Court Certified real time Spanish interpreter, was sworn in and provided interpretation of the hearing and proceeds to Ms. Lopez and, other sole Spanish speakers.
8. The address of the subject property is 219 La Vida De Jean SW.
9. All property owners within 100 feet of the subject property and the affected neighborhood association were notified.
10. Southwest Alliance of Neighborhoods (SWAN); Westside Coalition of Neighborhood Associations and South Valley Coalition of Neighborhood Associations are the affected neighborhood associations.
11. The neighborhood associations were notified by e-mail dated May 30, 2019.
12. No response nor request for meeting has been submitted.
13. The subject property is currently zoned R-T.
14. The request is for an existing “shade” structure, previously constructed without a permit and is encroaching both adjacent property lot lines.
15. The structure was later enclosed and converted into living area.
16. Applicant stated it was built for their privacy and was constructed by her brother, her boyfriend and other friends and relatives.
17. Applicant testified that the structure was enclosed on three sides by walls, and the fourth wall is the house.
18. There are electrical outlets in the walls and windows and a door on the west end of the structure.
19. The side walls of the structure are constructed on the common wooden fence of the adjacent properties.
20. An e-mail from Irene and Alex Alvara, dated July 8, 2019, was submitted in opposition to the Application.
21. An e-mail from Manuel and Rosa Casteneda, 223 La Vida De Jean SW, dated Jun 3, 2019, stating they are adjacent property owners and in opposition to the request.
22. Manuel and Rosa Casteneda appeared in opposition to the Application and are represented by Gilbert Juarez, esq.
23. Attorney Juarez, summarized their main points in opposition and the Castenedas were individually sworn in and verified and ratified the statements their attorney made in opposition.
24. They are property owners to the south side of the subject property.
25. They presented evidence and submitted photographs showing that the Applicant had constructed the side walls of this accessory building directly on top of the common property line fence.
26. These side walls are insulated and retaining strips are secured into the adjacent common wooden fences.

27. Insulation is protruding from areas of the “wall” where the supporting common fencing has deteriorated and pickets have fallen from the fence.
28. The side walls of the structure are constructed on the common fence with both adjacent properties.
29. The current structure extends and is actually on the lot lines of both adjacent properties.
30. They state this is not a shade structure but a living area and that enclosing walls are not allowed for a shade structure.
31. The Castanedas also stated they had discussed their opposition with other adjacent neighbors Irene and Alex Alvara, (who had also submitted an opposition e-mail) and they verified they remain in opposition to the request for the same reasons.
32. Applicant was given opportunity to respond to the points raised in opposition.
33. Applicant admitted that the structure was constructed without a permit.
34. Applicant stated when they were building the structure, they did not know they needed a permit.
35. Applicant stated they also did not know their neighbors and did not talk to them and did not know they objected to the construction.
36. Applicant stated if the request is granted, they resolved to build it right, they would restructure and rebuild it according to the law.
37. Transportation reports no opposition to the Application.
38. The Application was for a variance allowing an existing and encroaching “shade” structure to remain in both required side lot line setbacks.
39. The existing structure is enclosed by walls supporting the structure and the supporting walls are constructed in the required side yard lot line setbacks, and specifically are not permitted in Table 5-1-4.
40. There are walls supporting the structure on three sides.
41. The walls are actually constructed on the side lot lines.
42. The existing structure is not a shade structure.
43. There are no special circumstances applicable to the Subject Property that are not self-imposed and Applicant fails to satisfy Section 14-16-6-6(N)(3)(a)(1).
44. The existing structure does impact and is contrary to the public safety, health and welfare of the community and Applicant fails to satisfy Section 14-16-6-6(N)(3)(a)(2).
45. The existing structure does cause significant adverse material impacts on surrounding and adjacent properties and Applicant fails to satisfy Section 14-16-6-6(N)(3)(a)(3).
46. The proper “Notice of Hearing” signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
47. The Applicant has authority to pursue this Application.

DECISION:

DENIAL of a variance of 3 ft to the allowed encroachment of 3 ft from side lot line for a shade structure.

APPEAL:

If you wish to appeal this decision, you must do so by September 19, 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.



Stan Harada, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
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Gilbert Juarez, 1412 Lomas Blvd NW, 87104
Manuel & Rosa Castaneda, 223 La Vida de Jean SW, 87105