



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

Frank Silva requests a variance of 3 ft to the required 3 ft distance from a lot line for Lot 4, Salas Addn No1, located at 4317 Nicole CT SW, zoned R-1A [Section 14-16-5-1-F]

Special Exception No:..... **VA-2019-00208**
Project No: **Project#2019-002528**
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 Frank Silva (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 3 ft to the required 3 ft distance from a lot line (“Application”) upon the real property located at 4317 Nicole CT 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 required 3 ft distance from a lot line.
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. Frank Silva, property owner appeared and gave evidence in support of the application.
5. The address of the subject property is 4317 Nicole Ct. SW.
6. All property owners within 100 feet of the subject property and the affected neighborhood association were notified.

7. Southwest Alliance of Neighborhood Associations (SWAN); Westside Coalition of Neighborhood Associations and South Valley Coalition of Neighborhood Associations are the affected neighborhood associations.
8. The neighborhood associations were notified by e-mail dated May 15, 2019.
9. No response nor request for meeting has been submitted.
10. The subject property is currently zoned R-A.
11. The requested variance is from Section 14-16-5-1(F): *Development Standards; Non-Residential Zone Districts; Exceptions and Encroachments*; Table 5-1-4: *Allowed Exceptions and Encroachments*.
12. The encroaching "structure" is a 12-inch extension to the roof of an existing accessory structure.
13. This accessory structure is used as a work and storage area for property owner.
14. The existing accessory building is not encroaching into required setbacks, but the roof extensions encroach to the property line.
15. Applicant constructed the roof extensions to protect his property, vehicles and equipment from damages caused by large branches falling from a tree on adjacent property to the north of the subject property.
16. The tree is very tall and large and although it sits on adjacent property to the north of subject property, has many large and dead or dying branches which occasionally fall onto the subject property.
17. These falling branches caused extensive damages to Applicant's personal property, vehicles and equipment in 2006, resulting in a large insurance claim (\$38,000) and evidenced by documents submitted by Applicant in support of the Application.
18. Applicant extended the roof in an attempt to prevent further damage to his property, vehicles and equipment.
19. Applicant has lived on the subject property for 41 years.
20. E-mails from Mark and Michelle Sanchez, dated June 6, 2019, were submitted in opposition to the Application.
21. They are adjacent property owners to the west of the subject property.
22. Their primary complaint is erosion damage to their property resulting from rainwater run-off from the encroaching structure draining onto their property.
23. Applicant submitted documents evidencing that a contractor has already been hired, to install gutters and downspout to be attached to the encroaching structure to channel all rainwater run off onto Applicant's property.
24. The mitigation proposed by Applicant is reasonable and sufficient to mitigate any damages caused by the encroaching structure to adjacent property.
25. No one appeared in opposition to the Application.
26. 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).
27. 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).
28. 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).

29. 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).
30. 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).
31. The proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
32. The Applicant has authority to pursue this Application.

DECISION:

APPROVAL of a variance of 3 ft to the required 3 ft distance from a lot line.

CONDITIONS:

Applicant shall mitigate the rain water run off with gutter and downspout installation as soon as reasonable.

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: ZHE File
Zoning Enforcement
Frank Silva, 4317 Nicole CT SW, 87105