Herb Cervantes requests a variance of 10 ft to the 25 ft rear yard setback for Lot 5, Riverview Acres Unit 2, located at 3308 Calle Vigo NW, zoned R-A [Section 14-16-5-1]

On the 15th day of January, 2019, Yolanda Montoya, agent for property owner Herb Cervantes (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 10 ft to the 25 ft rear yard setback (“Application”) upon the real property located at 3308 Calle Vigo NW (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 10 ft to the 25 ft rear 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. Yolanda Montoya, agent for property owner appeared and gave evidence in support of the application.
5. All property owners within 100 feet of the subject property and the affected neighborhood association were notified.
6. West Old Town Neighborhood Association and Villa del Rio Neighborhood Association are the affected neighborhood associations.
7. Nothing was submitted by any NA.
8. The subject property is currently zoned R-A.
10. The subject lot is a ½ acre lot.
11. Owner originally purchased the lot in order to have sufficient expansion for a future casita for his elderly parents.
12. The IDO became effective May 2018, and rear yard set-back requirements for his lot increased to 25 feet min.
13. This change of rear yard set-back requirements create a hardship for owner.
14. This change of set-back requirements for the subject property was created by governmental action which owner did not create.
15. Owner did not receive compensation for this change.
16. Most of the other properties in the surrounding community already have casitas.
17. Adjacent properties would not be adversely affected as many contain casitas with the original set-back requirements.
18. The proposed addition would enhance the value of the property and the surrounding community.
19. Transportation reported no objection to the Application.
20. No one appeared in opposition to the application.
21. 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).
22. 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).
23. 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).
24. 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).
25. 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).
26. The proper “Notice of Hearing” signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
27. The Applicant has authority to pursue this Application.

DECISION:

APPROVAL of a variance of 10 ft to the 25 ft rear yard setback.
APPEAL

If you wish to appeal this decision, you must do so by February 14, 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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Yolanda Montoya, 8724 Alameda Park Dr NE, 87113