



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

MCHT, LLC requests a variance of 0.271 acres to allow a lot larger than the allowable contextual standards for Lot 26 – B, Alvarado Gardens, located at 99999 Matthew Ave NW, zoned R-A [Section 14-16-5-1(C)(2)(b)]

Special Exception No:..... **VA-2019-00302**
Project No: **Project#2019-002610**
Hearing Date: 11-19-19
Closing of Public Record: 11-19-19
Date of Decision: 12-04-19

On the 19th day of November, 2019, Joshua Skarsgard, agent for property owner MCHT, LLC (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 0.271 acres to allow a lot larger than the allowable contextual standards (“Application”) upon the real property located at 99999 Matthew Ave NW (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 0.271 acres to allow a lot larger than the allowable contextual standards in an R-A zone district.
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. Joshua Skarsgard, agent for MCHT, LLC, property owner appeared and gave evidence in support of the application.

5. The address of the subject property is 99999 Matthew Ave NW.
6. The subject property is currently zoned R-A and in an Area of Consistency.
7. The request is for variance from Section 14-16-5-1(C)(2)(b)2: ***Development Standards; Dimensional Standards; Residential Zone Districts; Lot Size.***, which states: “*New low-density residential development shall not be constructed on a Tax Assessor’s lot, or combination of abutting Tax Assessor’s lots, that is greater than 125 per cent of the average of the size of the Tax Assessor’s lots, or combination of adjacent Tax Assessor’s lots, that contain a primary building on that lot.*”
8. All property owners within 100 feet of the subject property and the affected neighborhood association were notified.
9. Rio Grande Blvd. Neighborhood Association and North Valley Coalition are the affected neighborhood associations.
10. An e-mail from Doyle Kimbrough, Treasurer, Rio Grande Blvd. NA, dated August 30, 2019, indicting “No need for a meeting with the RGBNA”, was submitted in support of the Application.
11. Applicant is requesting a variance of 0.270 acres to the lot size contextual standards maximum 0.559 acres to allow combining of 2 lots into 1 lot, resulting in a new lot size of 0.83 acres.
12. The request is to allow consolidation of two lots with the following legal description: **Lot 1:** Northeasterly portion Lot 25; and **Lot 2:** Lot 26-B Alvarado Gardens Unit 1.
13. Applicant attempted to replat the two lots into a single lot by application to the DRB.
14. The combined new lot would be 0.830 acres in size.
15. IDO, effective May, 2019, set new limits for a R-A Zone district lot size of 0.559 acres.
16. The Application was rejected by DRB on the basis that the combined lot would exceed the new limits imposed by the IDO and the proposed replat must meet the contextual standards required by the IDO, and indicated the largest lot allowed would be .559 acres.
17. A survey, site plan and accompanying photographs were submitted in support of the Application.
18. The location of the MRGCD Easement “(Campbell Community Ditch)” that runs through the southerly portion of the Lots removes .2 to .3 acres of usable property.
19. This ditch presents an 8 foot grade change from the ditch down to the subject lots.
20. The grade change requires a slope of dirt that merges into the southerly portion of the lots, which further reduces the usability of the Lots.
21. This special circumstance of the property creates an extraordinary hardship in the form of substantial and unjustified limitation of the reasonable use of the lots and creates difficulties resulting from strict compliance with the maximum lot size in the R-A zone imposed by the IDO.
22. The adoption of the IDO created a unique and special circumstance upon the Lots, and creates an extraordinary hardship in the form of substantial and unjustified limitation of the reasonable use of the Lots.
23. 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).

24. The Applicant has always intended to construct a single-family residence on the Lots and the Application will not alter his commitment to construct a single-family residence on the combined lots.
25. 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).
26. Applicant will construct a single-family residence on the Lots as combined or the same results if the Lots are not combined, and therefore 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).
27. The ZHE variance criteria allows for relief from the strict interpretation of the zoning regulations if the criteria are met.
28. The special circumstance of the subject property (the Ditch) creates a substantial hardship on the Lots and meets the intent of the R-A zoned lot maximum lot size regulations.
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 overall size of the consolidated Lots (.83 acres) is still within .25 acres of the maximum size (.599 acres) and the Ditch easement loss (.2 - .3 acres) of usable land is balanced.
31. 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).
32. The proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
33. The Applicant has authority to pursue this Application.

CONCLUSIONS OF LAW:

The criteria within Section 14-16-6-6(N)(3)(a) of the IDO are satisfied.

DECISION:

APPROVAL of a variance of 0.271 acres to allow a lot larger than the allowable contextual standards.

APPEAL:

If you wish to appeal this decision, you must do so by December 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
MCHT, LLC, PO BOX 9043, 87119
Joshua Skarsgard, 8220 San Pedro DR, 87113