



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

Pat and Tom Fritts request a variance of .0576 acres to allow a lot larger than the allowable contextual standards for Lot 14, Block E1, Netherwood Park 2nd Replat, located at 2539 Harold Pl NE, zoned R-1D [Section 14-16-5-1(c)(2)(b)]

Special Exception No:..... **VA-2019-00232**
Project No: **Project#2019-002308**
Hearing Date: 09-17-19
Closing of Public Record: 09-17-19
Date of Decision: 10-02-19

On the 17th day of September, 2019, property owners, Pat and Tom Fritts (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of .0576 acres to allow a lot larger than the allowable contextual standards (“Application”) upon the real property located at 2539 Harold Pl NE (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of .0576 acres to allow a lot larger than the allowable contextual standards.
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. Tom and Pat Fritts, property owners appeared and gave evidence in support of the application.
5. The address of the subject property is 2539 Harold Place NE.
6. The subject property is currently zoned R-1D.
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. Netherwood Park Neighborhood Association is the affected neighborhood association.
10. A letter from William Gannon, PhD, President, NPNA, dated July 2, 2019, indicating unanimous support for the request, was submitted in support of the Application.
11. Applicant is requesting a variance of 0.0576 acres to the lot size contextual standards maximum 0.2934 acres to allow combining of 2 lots into 1 lot, resulting in a new lot size of 0.351 acres.
12. Applicants purchased the subject property (Lot 14, Block E-1), December, 2018, and was able to purchase one-half of the adjacent vacant lot, (Portion of Lot 15, Block E-1).
13. Applicants attempted to replat the two lots (14 and portion of 15) into a single lot by application to the DRB.
14. The combined new lot would be 0.351 acres in size.
15. IDO, effective May, 2018, set new limits for a residential lot size is 0.2934 acres.
16. The Application was rejected by DRB on the basis that the combined lot would exceed the new limits imposed by the IDO.
17. The half lot (Portion of Lot 15) is 0.1212 acres, which is smaller than the suggested minimal size of 75% of mean required by the IDO for an average sized lot (0.22 acres) in this area.
18. This half lot was created by dividing Lot 15 lengthwise, resulting in a smaller than the minimum lot size (width: 38.5-feet), and would be unbuildable, with setback requirements and smaller minimum street curb width.
19. The remaining half lot is owned by adjacent neighbor to the southwest.
20. A survey, site plan and accompanying photographs were submitted in support of 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. Lot 15 was already in a vacant and abandoned condition in an otherwise fully developed neighborhood, had become a neighborhood eyesore and a public nuisance.
23. The Lot had become overgrown with unattended bushes and trees and had become a health and safety hazard to the neighborhood.
24. The request will mitigate the existing harm caused by the vacant and abandoned nature of this half lot, and improve the surrounding community.

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. 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 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).
28. 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).
29. The proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
30. The Applicant has authority to pursue this Application.

DECISION:

APPROVAL of a variance of .0576 acres to allow a lot larger than the allowable contextual standards.

APPEAL:

If you wish to appeal this decision, you must do so by October 17, 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
Pat and Tom Fritts, 2539 Harold Pl NE, 87106