



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

James Nelson requests a variance of 300ft in distance to the required 1500ft from any other C.R.F. for Lot 30, Block 125, Snow Height Addn, located at 10308 Snow Heights Blvd NE, zoned R-1B [Section 14-16-4-2]

Special Exception No:..... **VA-2019-00250**
Project No: **Project#2019-002685**
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 owner James Nelson (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 300ft in distance to the required 1500 ft from any other C.R.F. (“Application”) upon the real property located at 10308 Snow Heights Blvd NE (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 300ft in distance to the required 1500 ft from any other Community Residential Facility (C.R.F.).
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. The request is for a variance from Section 14-16-4-3(B)(8)(c): **USE REGULATION; Use-Specific Standards; Community Residential Facility, Small, Medium, or Large:** which states” *This use shall be located a minimum of 1,500 feet from any other community residential facility or group home.”*

5. James Nelson, agent for Ad Hoc Investments LLC, property owner appeared and gave evidence in support of the application.
6. James Nelson is also the owner of the subject property, and purchased the property July, 2019.
7. The address of the subject property is 10308 Snowheights NE.
8. The subject property is currently zoned R-1B.
9. The proposed project is the operation of a CRF, (Small > 8) for the elderly.
10. **Commercial Residential Facility** is defined in the IDO: “Any building, structure, home, or facility in which persons reside for a period of more than 24 hours and that is designed to help the residents adjust to the community and society and is used or intended to be used for the purposes of letting rooms, providing meals, and/or providing personal assistance, personal services, personal care, and protective care, but not skilled nursing care.” [IDO, Definitions: page 454].
11. **CRF, Small** is defined in the IDO as: “A facility in which personal service, personal assistance, personal care, and/or protective care are provided to no more than 8 individuals ...” [IDO, Definitions: page 454].
12. All property owners within 100 feet of the subject property and the affected neighborhood association were notified.
13. East Gateway Coalition is the affected neighborhood association.
14. An e-mail from Jim Andrews, VP East Gateway Coalitions, dated July 18, 2019, indicating no objections to the request, was submitted in support of the Application.
15. An e-mail from M. Brasher, President East Gateway Coalitions, dated July 25, 2019, indicating The East Gateway Coalition had no objections to the use, was submitted in support of the Application.
16. A site plan and accompanying photographs was submitted in support of the Application.
17. Applicant is a Respiration Therapist and the other individuals involved in the project are registered nurses.
18. As medical professionals, they are acutely aware of the shortage of affordable senior assisted/non skilled living facilities.
19. The proposed project is characterized as “small” and would house no more than 8 individuals.
20. This small number would have little effect on the surrounding neighborhood.
21. The proposed project is intended to provide residents in need of services and assistance adjusting to community and society.
22. The project will provide rooms, meals, personal assistance, personal services, personal care, and protective care, but not skilled nursing care.
23. The proposed project is not a skilled nursing care facility.
24. The primary residential building on the lot is approximately 2,000 sq. ft., and along with subdividing the garage will yield 8 large rooms for the seniors.
25. The nearest CRF is located on Morris NE, approximately 1,200 feet away, necessitating the request for a variance.
26. Several adjacent neighbors have verbally expressed support for the proposed facility.
27. The subject property is located near a major medical facility which would supplement the services offered in the proposed project.
28. Rubyanne Gutierrez, 10316 Snowheights Blvd. NE, appeared and gave comments to the request.

29. She saw the Notice of Hearing and appeared to find out more details regarding the Application.
30. She is the owner of a property 2 houses away from the subject house, and stated that the neighborhood was filled with senior citizens.
31. She was originally concerned that the Application was for a drug rehab house or other potentially objectionably use that might create a nuisance in a predominately senior community.
32. After hearing Applicant and his request she now supports the Application.
33. The subject property is an unusual shape, lone and triangularly on one end.
34. The proposed project will cause no adverse material impact on either adjacent property, nor on the other property line, which is adjacent to a natural arroyo.
35. 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).
36. The subject property is currently run down and the proposed project would help revitalize the surrounding neighborhood and redevelop a currently underutilized and potential a nuisance property into an asset for the neighborhood.
37. The proposed project will specifically not include a halfway house for individuals in the criminal justice system, nor residential diversion programs, nor persons currently using or addicted to alcohol or controlled substances.
38. 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).
39. The proposed use would house elderly residents, who are not expected to be operating private motor vehicles, and there would no impact on pedestrian or transit connectivity.
40. 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).
41. The subject property is located in a residential zone district, and would assist in creating a healthy and sustainable community services with a mix of uses conveniently available to the surrounding community, (which is consistent with ***ABC Comp. Plan, Goal 5.2: COMPLETE COMMUNITIES***, Policy 5.2.1: *Create healthy, sustainable communities with a mix of uses that are conveniently accessible from surrounding neighborhoods.*)
42. 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).
43. 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).
44. The proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
45. The Applicant has authority to pursue this Application.

DECISION:

APPROVAL of a variance of 300 ft in distance to the required 1500ft from any other C.R.F.

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
James Nelson, 10308 Snow Heights Blvd NE, 87112
Rubyanne Gutierrez, 10316 Snowheights Blvd. NE, 87112