



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

Paul J. Sandoval requests a variance of 6 ft 3 in to the required 15 ft rear yard setback for Lot 3-P1, Park Ridge Estates, located at 5312 Park Ridge RD NW, zoned R-ML [Section 14-16-5-1(c)]

Special Exception No:..... **VA-2019-00263**
Project No: **Project#2019-002711**
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, Jonathan Turner, agent for property owner Paul J. Sandoval (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 6 ft 3 in to the required 15 ft rear yard setback (“Application”) upon the real property located at 5312 Park Ridge RD NW (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 6 ft 3 inches to the required 15 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. Jonathan Turner, agent for Paul and Rosemary Sandoval, property owners, appeared and gave evidence in support of the application.
5. The address of the subject property is 5312 Park Ridge Rd. NW.

6. The subject property is currently zoned R-ML.
7. The request is for a variance from Section 14-16-5-1(C)(1): ***DEVELOPMENT STANDARDS; Residential Zone District Table; Table 5-1-1: Residential Zone District Dimensional Standards; Setback Standards; Rear, minimum.***
8. The rear yard setback required in an R-ML zone district is 15-feet.
9. All property owners within 100 feet of the subject property and the affected neighborhood association were notified.
10. Vista Grande Neighborhood Association and Westside Coalition of Neighborhood Associations are the affected neighborhood associations.
11. The neighborhood associations were notified by e-mail dated July 18, 2019.
12. No response nor request for meeting has been submitted.
13. The request is for a variance of 6-feet 3-inches to the required 15-foot minimum rear yard setback.
14. The request is to allow an existing enclosed patio structure to remain in the setback required.
15. The existing patio is attached to the primary building.
16. A site plan, with detailed drawings, elevations and construction drawing were submitted in support of the Application.
17. Transportation issued a report indication no opposition to the Application.
18. Owner Paul Sandoval has suffered a number of medical episodes which have rendered him disabled and need of a quiet and restful place to recuperate his health.
19. The existing patio was enclosed to provide him protection from the heat and exposure to the weather in general.
20. The existing lot was platted by the City prior to the enactment of the IDO, which now subject the lot to more restrictive standards.
21. The subject house was constructed in 1999, when the location of the patio was legally permitted in the rear yard setback area.
22. In 2004 the City amended the then City Zoning Code regulations to require a conditional use approval for a covered patio in the rear yard setback, making the Applicants' covered patio non-conforming under the regulations.
23. The subject lot is exceptionally shaped and unique in form compared to other lots in the surrounding neighborhood.
24. The lot is narrower in the rear yard than the other 5 lots on the block.
25. The development pattern for this neighborhood created rear yard property lines adjacent to Tucson Rd. NW.
26. There are no other properties along the rear yard property lines of this neighborhood.
27. The lot has physical characteristics that also make it exceptional as the rear yard is directly in line with Albuquerque Fire Department Station's garage doors for both ambulance and fire truck access.
28. The sounds from this activity and use affect the subject lot more directly than other lots in the area.
29. No one appeared in opposition to the Application.
30. 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).

31. Since the patio has been in place for some time, no complaints have been expressed and all adjacent neighbors have expressed support for the request, there has been no impact to the public safety, health or welfare.
32. Applicant's health and safety has been enhanced by the project.
33. 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).
34. There is no evidence of adverse impacts on surrounding properties or infrastructure improvements in the vicinity.
35. 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).
36. Approval of the request will allow the existing enclosed patio to come into compliance with IDO's permitting requirements and to conform to the IDO standards.
37. The request will protect the quality and character of residential neighborhoods; provide for the efficient administration of land use and development regulations in the City; protect the health, safety and welfare of the public; and ensure development in the City is consistent with the spirit and intent of the IDO.
38. 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).
39. The variance will allow Applicants to avoid the extraordinary expense and practical hardship of removing the walls and requiring other severe alterations to the primary residence.
40. 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).
41. The proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
42. The Applicant has authority to pursue this Application.

DECISION:

APPROVAL of a variance of 6 ft 3 inches to the required 15 ft rear yard setback.

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
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