Isaac Sandoval (Agent, Yolanda Montoya) requests a variance of 5 feet to the required 10 feet side yard setback for Lot 7, Block B, La Sala Grande Estates Unit 2, located at 3416 La Sala Del Oeste NE, zoned R-1D [Section 14-16-5-1]

On the 18th day of August, 2020, property owner Isaac Sandoval ("Applicant") appeared before the Zoning Hearing Examiner ("ZHE") requesting a variance of 5 feet to the required 10 feet side yard setback ("Application") upon the real property located at 3416 La Sala Del Oeste NE ("Subject Property"). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 5 feet to the required 10 foot side yard set-back.
2. The City of Albuquerque Integrated Development Ordinance (IDO), 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 Isaac Sandoval, property owner, appeared and gave evidence in support of the application.
5. Property owner, Isaac Sandoval also appeared and gave evidence in support of the application.
6. The address of the subject property is 3416 La Sala Del Oeste NE, Albuquerque, New Mexico 87111.
7. The subject property is currently zoned R-1D.
8. The request is for a variance from Section 14-16-5-1, Table 5-1-1, Residential Zone District Dimensional Standards, which requires a 10 feet setback for side yards in an R-1D zone district.
9. All property owners within 100 feet of the subject property and the affected neighborhood association were notified.
10. La Sala Grande Neighborhood Association, Inc., and District 7 Coalition of Neighborhood Associations are the affected neighborhood associations.
11. The neighborhood associations were notified by e-mail dated Jun 8, 2020.
12. No response, nor request for meeting has been submitted.
13. The proposed project is construction of an accessory structure for storage of property owner’s recreational vehicles.
14. The side yard setback required was 5 feet before the enactment of the IDO in 2018.
15. The primary residence was constructed prior to the IDO.
16. Other properties in the neighborhood have structures constructed to the previous 5 foot side yard setback requirement.
17. A site plan, with detailed drawings, elevations and construction drawing were submitted in support of the Application.
18. The shape of the subject lot is unusual and is a pie shaped wedge, with the wider edge facing the street.
19. Transportation issued a report indication of no opposition to the Application.
20. The adjacent property owner on the side yard subject to the request has verbally indicated support for the application.
21. No one appeared in opposition to the Application.
22. Applicant and agent have met the burden by providing evidence that establishes 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).
23. Applicant and agent have met the burden by providing evidence 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).
24. Applicant and agent have met the burden by providing evidence there is no evidence of adverse impacts on surrounding properties or infrastructure improvements in the vicinity.
25. Applicant and agent have met the burden by providing evidence 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).
26. Applicant and agent have met the burden by providing evidence 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.
27. Applicant and agent have met the burden by providing evidence 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. Applicant and agent have met the burden by providing evidence 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.

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 5 feet to the required 10 foot side yard setback.

APPEAL:

If you wish to appeal this decision, you must do so by September 17, 2020 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.

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Stan Harada, Esq.
Zoning Hearing Examiner
cc:

ZHE File
Zoning Enforcement
Isaac Sandoval, askisaac@gmail.com
Yolanda Montoya, londie.mo4@gmail.com