



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

Sean and Yvonne O'Malley (Agent, JAG Planning and Zoning) request a variance to lot area of 5,342 square feet to the minimum 10,000 square feet lot size required for proposed lot for Lot 19, Block 4, Fitzgerald Subd, located at 805 Fitzgerald RD NW, zoned R-1D [Section 14-16-5-1]

Special Exception No:..... **VA-2019-00437**
Project No: **Project#2019-003133**
Hearing Date: 01-21-20
Closing of Public Record: 01-21-20
Date of Decision: 02-05-20

On the 21st day of January, 2020, JAG Planning and Zoning, agent for property owner Sean and Yvonne O'Malley ("Applicant") appeared before the Zoning Hearing Examiner ("ZHE") requesting a variance to the lot area of 5,342 square feet to the minimum 10,000 square feet lot size required for proposed lot ("Application") upon the real property located at 805 Fitzgerald RD NW ("Subject Property"). Below are the ZHE's findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance to the lot area of 5,342 square feet to the minimum 10,000 square feet lot size required for proposed lot.
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. Agent for property owner appeared and gave evidence in support of the application.
5. All property owners within 100 feet of the subject property and the affected neighborhood association were notified.
6. The subject property is currently zoned R-1D.
7. Based on evidence submitted by or on behalf of Applicant, 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). Specifically, the new regulations within the IDO does not allow the subject site to meet the new minimum lot size requirement for a lot split. The government's action, caused the site to be subject to a special circumstance that creates a hardship in the form of substantial and unjustified limitation on the reasonable use or return on the property and practical difficulties that result from the strict compliance of the minimum standards. Further, the area of the subject site contains a mixture of lot sizes, some of which could meet the lot size requirements with a lot split and other lots that do not meet the new minimum lot size requirements. Since the area of the subject site does not have a standardized development pattern with consistent lot size area or width, the current lot size of the subject site creates a special circumstance that does not apply generally to other property in the same zone district and vicinity of the subject site. No evidence to the contrary was presented.
8. Based on evidence submitted by or on behalf of Applicant, 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). Specifically, Agent testified that, if granted approval, the Applicant intends to subdivide the property in a manner that is consistent with the IDO and the Development Process Manual (DPM), which requires proper drainage and vehicular access onto the subject site. The Applicant intends to construct a second dwelling unit that will meet the minimum building setback, building height requirements and meet all applicable regulations and codes. No evidence to the contrary was presented.
9. Based on evidence submitted by or on behalf of Applicant, 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). Specifically, the existing configuration of the site, with the exception of an addition to the back structure, will remain consistent with what currently exists. Furthermore, there is a limited view of the proposed back lot from portions of the street. No evidence to the contrary was presented.
10. Based on evidence submitted by or on behalf of Applicant, 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). Specifically, Applicant presented evidence that the intent of IDO will still be met in that the subject site will still be developed as a single family and will still allow the site to meet the current setback and building height requirements that are outlined in the site's applicable zone district. No evidence to the contrary was presented.
11. Based on evidence submitted by or on behalf of Applicant, 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). Specifically, evidence was presented that the applicants did explore the opportunity to have one of the lots meet the minimum lot size requirement, but that would have required an additional setback variance request. The configuration of the existing buildings will allow development to meet existing setback requirements for both

proposed lots. Thus. the applicants are not requesting more than what is minimally necessary for a variance. No evidence to the contrary was presented.

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

DECISION:

APPROVAL of a variance to the lot area of 5,342 square feet to the minimum 10,000 square feet lot size required for proposed lot.

APPEAL:

If you wish to appeal this decision, you must do so by February 20, 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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Zoning Hearing Examiner

cc:

ZHE File
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