



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

James Tilley requests a variance of 8 feet to the required 10 foot side yard setback for Lot 4, Block 13, Monterrey Hills Addn, located at 717 Carlisle Blvd SE, zoned R-1D [Section 14-16-2-3(H)]

Special Exception No:..... **VA-2020-00470**
Project No: **Project#2020-004881**
Hearing Date: 02-16-21
Closing of Public Record: 02-16-21
Date of Decision: 03-02-21

On the 16th day of February, 2021, property owner James Tilley (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 8 feet to the required 10 foot side yard setback (“Application”) upon the real property located at 717 Carlisle Blvd SE (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

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1. Applicant is requesting a variance of 8 feet to the required 10 foot side 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. Applicant 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, it appears that 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, applicant testified that the location characteristics of the Subject Property along Carlisle Boulevard SE and the smaller size of the Subject property in comparison to other properties in the vicinity constitute special circumstances.
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, evidence was submitted supporting that the Applicant intends to use the property in a manner that is consistent with the IDO and the Development Process Manual (DPM).
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 proposed setback is requested to allow continued use of a former 2-car garage as living space. Applicant testified that the former 2-car garage was already being used as living space, and not as a garage, before he purchased the property. In fact, Applicant testified that two very large trees have grown in the backyard to block vehicular access to the former 2-car garage. The proposed site plan would preserve these trees, while forcing a garage-only use may lead to the trees being cut down to allow vehicular access.
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 continue the existing use and the proposed setback would merely allow the existing structure, formerly a 2-car garage, to be adjoined to the residence as living space.
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, Applicant testified that he requested only the setback variance as is necessary to continue the existing use of the existing structure, formerly a 2-car garage, to be adjoined to the residence as living space. Any smaller variance would be ineffective. Thus, the applicant is not requesting more than what is minimally necessary for a variance.
12. Several neighbors residing in the vicinity of the subject property submitted written correspondence and testified in opposition to the Application, while several others submitted written correspondence and testified in support of the Application.
13. The opposition centered on a new one-car garage which is apparently built with a zero lot line and no setback. However, that new one-car garage is not within the purview of the ZHE in this matter and is not germane to the ZHE's determination of this matter. Neighbors are encouraged to consult with City Code Enforcement regarding the new one-car garage.
14. The next-door neighbors to the north, who would apparently be most affected by the proposed setback, given that it is closest to their property, spoke strongly in favor of the Application.

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

DECISION:

APPROVAL of a variance of 8 feet to the required 10 foot side yard setback.

APPEAL:

If you wish to appeal this decision, you must do so by March 17, 2021 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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