



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

Paul & Josie Peloquin requests a variance of 4 ft to allow an accessory structure taller than the allowed wall height in a street side setback where wall height is allowed to be 6 ft in the street side yard, pre-IDO, and 5 ft in the front yard setback area per Conditional Use approval, 12ZHE-80388, Project # 1009535 for Lot 4, Block 11A, Mesa Del Norte Addn, located at 901 Grove ST NE, zoned R-1C [Section 14-16-5-11(C)(4)(b)]

Special Exception No:..... **VA-2020-00461**
Project No: **Project#2020-004804**
Hearing Date: 01-19-21
Closing of Public Record: 01-19-21
Date of Decision: 02-02-21

On the 19th day of January, 2021, property owners Paul & Josie Peloquin (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 4 ft to allow an accessory structure taller than the allowed wall height in a street side setback where wall height is allowed to be 6 ft in the street side yard, pre-IDO, and 5 ft in the front yard setback area per Conditional Use approval, 12ZHE-80388, Project # 1009535 (“Application”) upon the real property located at 901 Grove ST NE (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 4 ft to allow an accessory structure taller than the allowed wall height in a street side setback where wall height is allowed to be 6 ft in the street side yard, pre-IDO, and 5 ft in the front yard setback area per Conditional Use approval, 12ZHE-80388, Project # 1009535.
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-1C.
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 surroundings and location characteristics of the site constitute special circumstances, because of the location of the subject site adjacent to commercial and multi-family uses, which merit the increased security and visual barrier that the requested variance would provide.
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 wall is designed to be in harmony and consistency with what currently exists in the neighborhood, which was supported by photographic evidence and oral testimony.
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 wall would merely add to the safety and security of the site.
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 any lower construction of the wall would be ineffective. Thus, the applicant is not requesting more than what is minimally necessary for a variance.
12. The owners of two separate properties in the vicinity of the subject property submitted written correspondence and testified in opposition to the Application.
13. One neighboring property owner complained of potential interference with the clear sight triangle. However, City Transportation submitted a report stating no objection.

14. Neighbors also complained of the color of the shed and the appearance of the wind-break, for each of which the variance is sought.
15. Applicant testified that he would remove the wind-break and paint the shed such that it blends in with the residence on the property. The ZHE finds that these measures would mitigate any negative visual impacts the variance may have.
16. The proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
17. The Applicant has authority to pursue this Application.

DECISION:

APPROVAL WITH CONDITIONS of a variance of 4 ft to allow an accessory structure taller than the allowed wall height in a street side setback where wall height is allowed to be 6 ft in the street side yard, pre-IDO, and 5 ft in the front yard setback area per Conditional Use approval, 12ZHE-80388, Project # 1009535.

CONDITIONS:

1. Applicant must remove the wind-break installed at the subject site within 60 days of this Notification of Decision.
2. Applicant must paint the Shed located along the Marble Avenue side yard to match the residence that is the primary structure on the subject site.

APPEAL:

If you wish to appeal this decision, you must do so by February 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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cc:

ZHE File

Zoning Enforcement

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