



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

Onesimo Vigil & Rachel Vigil (Agent, Richard Ayala) request a variance of 5 ft to the required 15 ft side yard setback for Lot 5A, Block 12, Volcano Cliffs Unit 5, located at 6516 Jade DR NW, zoned R-1D [Section 14-16-3-4(N)(3)]

Special Exception No:..... **VA-2021-00114**
Project No: **Project#2021-005395**
Hearing Date: 06-15-21
Closing of Public Record: 06-15-21
Date of Decision: 06-30-21

On the 15th day of June, 2021, Richard Ayala, agent for property owners Onesimo Vigil & Rachel Vigil (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 5 ft to the required 15 ft side yard setback (“Application”) upon the real property located at 6516 Jade DR NW (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 5 ft to the required 15 ft 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 providing a sound justification for the requested decision, based on substantial evidence, pursuant to IDO Section 14-16-6-4(E)(3).

4. The applicant bears the burden of showing compliance with required standards through analysis, illustrations, or other exhibits as necessary, pursuant to IDO Section 14-16-6-4(E)(4).
5. Agent for property owner appeared and gave evidence in support of the application.
6. All property owners within 100 feet of the subject property and the affected neighborhood association were notified.
7. The subject property is currently zoned R-1D.
8. The proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
9. The Applicant has authority to pursue this Application.
10. To establish the first prong of the variance test, evidence was submitted asserting that the Subject Property suffers from having lava rock in particular areas, which increases the cost and difficulty of construction in such areas. While these circumstances are certainly not self-imposed, the existence of lava rock appears to apply generally to other property in the same vicinity. Applicant failed to identify any way these circumstances impact the Subject Property differently than they effect other properties in the vicinity. Therefore, there appears no special circumstance under Section 14-16-6-6(N)(3)(a)(1).
11. Because all prongs of the variance test must be satisfied and, as stated above, Applicant failed to satisfy Section 14-16-6-6(N)(3)(a)(1), the Application must be denied.

DECISION:

DENIAL of a variance of 5 ft to the required 15 ft side yard setback.

APPEAL:

If you wish to appeal this decision, you must do so by July 15, 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.



Robert Lucero, Esq.
Zoning Hearing Examiner

cc:

ZHE File

Zoning Enforcement

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