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

Bienes & Autos LLC C/O Saenz-Ocon Lucila Etal requests a variance of 6 ft to the required 15 ft rear yard setback for Lot D3, T1, Carlos Rey, located at 99999 Delia AVE SW, zoned R-ML [Section 14-16-5-1(C)]

Special Exception No:..... **VA-2021-00340**
Project No: ..... **Project#2021-005790**
Hearing Date: 10-19-21
Closing of Public Record: 10-19-21
Date of Decision: 11-03-21

On the 19th day of October, 2021, property owner Bienes & Autos LLC C/O Saenz-Ocon Lucila Etal ("Applicant") appeared before the Zoning Hearing Examiner ("ZHE") requesting a variance of 6 ft to the required 15 ft rear yard setback ("Application") upon the real property located at 99999 Delia AVE SW ("Subject Property"). Below are the ZHE's finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 6 ft to the required 15 ft rear yard setback.
2. The City of Albuquerque Integrated Development Ordinance, Section 14-16-6-6(O)(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."

1. 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).
2. 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).
3. Applicant appeared and gave evidence in support of the application.

4. All property owners within 100 feet of the subject property and the affected neighborhood association were notified.
5. The subject property is currently zoned R-ML.
6. The proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
7. The Applicant has authority to pursue this Application.
8. To establish the first prong of the variance test, Applicant submitted a letter of justification stating that "[t]he state requires 15 feet of space and we have a shortage of 6 square feet variance, which we are only short in the north side with every other side meeting requirements." This statement does not establish any special circumstance. Further, despite direct questioning by the ZHE, Applicant did not submit any testimony at the hearing as to how the Subject Property has special circumstances that are not self-imposed and that do not apply generally to other property in the same zone and vicinity. Therefore, there appears no special circumstance under Section 14-16-6-6(O)(3)(a)(1), which would 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.
9. Because all prongs of the variance test must be satisfied and, as stated above, Applicant failed to satisfy Section 14-16-6-6(O)(3)(a)(1), the Application must be denied.

DECISION:

DENIAL of a variance of 6 ft to the required 15 ft rear yard setback.

APPEAL:

If you wish to appeal this decision, you must do so by November 18, 2021 pursuant to Section 14-16-6-4(V), 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
Bienes & Autos LLC C/O Saenz-Ocon Lucila Etal, lsaenz2021@icloud.com