



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

Las Ventanas NM, INC (Agent, Consensus Planning) requests a variance of .1405 acres to the required contextual lot size of .5816 acres for Lot 4, Block 17, N. Albuquerque Acres Tract 1 Unit 3, located at 8420 Glendale Ave NE, zoned R-1D [Section 14-16-5-1(C)(2)(b)]

Special Exception No:..... **VA-2022-00055**
Project No: **Project#2019-002573**
Hearing Date: 04-19-22
Closing of Public Record: 04-19-22
Date of Decision: 05-04-22

On the 19th day of April, 2022, Consensus Planning, agent for property owner Las Ventanas NM, INC (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of .1405 acres to the required contextual lot size of .5816 acres (“Application”) upon the real property located at 8420 Glendale Ave NE (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of .1405 acres to the contextual lot size of .5816 acres required by the City Integrated Development Ordinance (IDO) Section 5-1(C)(2)(b) Lot Size, which states in pertinent part:

In any Residential zone district in an Area of Consistency, the minimum and maximum lot sizes for construction of new low-density residential development shall be based on the size of the Bernalillo County Tax Assessor’s lot, or a combination of adjacent Tax Assessor’s lots, on the portions of the blocks fronting the same street as the lot where the new low-density residential development, is to be constructed, rather than on the size of the individual subdivision lots shown on the existing subdivision plat.

1. *New low-density residential development shall not be constructed on a Tax Assessor’s lot, or combination of abutting Tax Assessor’s lots, that is smaller than 75% of the average of the size of the Tax Assessor’s lots, or combinations of adjacent Tax Assessor’s lots, that contain a primary building on those blocks.*
2. The IDO Variance-Review and Decision Criteria are set forth in IDO Section 14-16-6-6(O)(3)(a), which 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. 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. 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. The proper “Notice of Hearing” signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
 6. Applicant has authority to pursue this Application
 7. All property owners within 100 feet of the subject property and the affected neighborhood association were notified.
 8. The Subject Property is currently zoned R-1D.
 9. The Subject Property is located in an Area of Consistency.
 10. A pre-application facilitated meeting was held on February 8, 2022, as evidenced by the Land Use Facilitation Program Project Meeting Report dated February 9, 2022, which is in the record in this matter. In addition to Agent and Applicant representatives, three community participants attended, who were affiliated with the District 4 Coalition and the Nor Este Neighborhood Association, respectively. According to the facilitated meeting report, these community participants expressed concerns about using a variance as the zoning mechanism to allow for smaller lots in this area, as it could set a negative precedent. However, the facilitated meeting report states that the community participants were not opposed to the specific lot sizes proposed in the Application.
 11. City Transportation submitted a report stating no objection.
 12. Agent and Applicant representatives appeared at the April 19, 2022 ZHE hearing and gave evidence in support of the Application.
 13. Several neighbors of the Subject Property appeared at the April 19, 2022 ZHE hearing and testified in opposition to the Application, citing concerns over consistency of the IDO and neighborhood expectations, property values, drainage, and other matters, while one neighbor appeared generally supportive of the Application. Several opposing neighbors stated that they purchased their respective properties based at least in part on expectations that the open characteristics of the neighborhood resulting from the relatively large size (nearly one-acre each) of the lots in the area would be preserved by zoning.
 14. The Application does not satisfy the requirements of IDO Section 14-16-6-6(O)(3)(a)(1), the text of which appears, below, in italics, with discussion as to each component part following in plain text:

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.

- a. Applicant's written justification states in response to this criterion that the ". . . special circumstance affecting the subject parcels is the larger size by acreage compared to surrounding lots. Both subject parcels are the same size as adjacent lots on the south side of Glendale Avenue. However, they are larger than many of the lots in the surrounding area, which includes a mix of lot sizes and single-family housing types."
- b. In reviewing the applicable IDO Zone Atlas Page B-209-Z, as well as the aerials and photos submitted by Applicant, it appears that of the 32 originally platted nearly one-acre lots along either side of Glendale Ave NE on the same block as the Subject Property, only 3 have been subdivided into smaller lots. If the same review is applied to the north side of Modesto Ave NE to the south of and within the same block as the Subject Property, and to the south side of Florence Ave NE located in the block to the north of the Subject Property, it likewise appears that only 3 of the 32 originally platted nearly one-acre lots in that area have been subdivided into smaller lots. Stated another way, it appears based on evidence in the record that only 6 out of 64 (less than 10%) of the originally platted nearly one-acre lots in Block 17 (where the Subject Property is located) and Block 16 (across Glendale and immediately north of the Subject Property), N. Albuquerque Acres Tract 1 Unit 3, have been subdivided into smaller lots.
- c. While smaller lots exist farther west and south of the Subject Property than Blocks 16 and 17, the ZHE finds that such outlying lots are outside the appropriate area of inquiry, because of their distance from the Subject Property and/or their having different zone designation than the Subject Property.
- d. Consequently, the approximately one-acre size of the Subject Property does not constitute a special circumstance. The evidence shows that lots smaller than approximately one-acre are the exception rather than the rule in the relevant area of inquiry.

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.

- a. As stated, above, it does not appear that the Application identifies a special circumstance that applies to the Subject Property and not generally to other property in the same zone and vicinity. Even assuming for the sake of argument that the characteristics identified by Applicant and Agent would constitute special circumstances under the IDO, it is not apparent that such characteristics cause an extraordinary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the property, or that practical difficulties result from strict compliance with the applicable minimum standards.
- b. For instance, nothing in the record would appear to limit the owner of the Subject Property from developing a single family home on the existing nearly

one-acre Subject Property and another single family home on the existing subject lot of the companion application (also listed under PR-2019-002573), in accordance with IDO standards. The existence of such homes within Block 17 (where the Subject Property is located) and Block 16 (across Glendale and immediately north of the Subject Property), N. Albuquerque Acres Tract 1 Unit 3, indicate that there is some demand for such homes.

- c. Further, Applicant's justification letter states that each of the Subject Property and the subject lot of the companion application (also listed under PR-2019-002573) are approximately 0.8864-acre in size. Therefore, the total area of Applicant's two lots regarding which the variances are requested under PR-2019-002573 is approximately 1.7684 acres. The Application further states that the minimum contextual lot size required by IDO Section 5-1(C)(2)(b) is 0.5816 acre. It follows that Applicant's two lots comprising together approximately 1.7684 acres would appear to be subdividable into three parcels with a minimum lot size of 0.5816 acre each ($1.7684/0.5816=3.09377$). Thus, it appears Applicant could develop three single family homes, one each on three separate lots created from the Subject Property and the subject lot of the companion application, without the need for a variance.
- d. Applicant's justification letter further argues that "There is very little demand in the Albuquerque housing market for extra-large lots of nearly one acre and extra-large single-family homes. According to Realtor.com, as of January 2022, 0.88-acre lots east of the subject parcels have been on the market for 473 days. Developed .24-acre lots west of Barstow Street were on the market for nine days before they were sold." However, Applicant testified that its plans are to develop, build, and sell single family homes on the Subject Property, not sell vacant lots. The quoted evidence regarding vacant lots therefore would appear inapposite, or at least not an "apples to apples" comparison with Applicant's planned single family homes. There does not appear to be specific evidence in the record as to the market demand for single family homes, but the ZHE surmises from circumstantial evidence in the record that market demand for finished single family homes is substantial (see, e.g., Applicant's justification letter at page 7 (citing the goal to "help alleviate housing demand in the City"))).

Therefore, The ZHE must conclude that the criteria in IDO Section 6-6(O)(3)(a)(1) are not satisfied.

15. The ZHE appreciates that Applicant seeks to build high-quality, attractive homes on its lots. It appears from the record that there is a community need for additional housing and that Applicant would stand to profit from delivering such development. In that context, the Application does not appear unreasonable. Nevertheless, the ZHE's task is not to grant approvals based on the reasonability of a given application, but rather to apply the IDO and other applicable law to the facts in evidence, to determine whether substantial evidence exists to satisfy all legal requirements.
16. Because the criteria in IDO Section 6-6(O)(3)(a)(1) are not satisfied, and all criteria of IDO 6-6-(O)(3)(a)(1) through -(5) must be satisfied to qualify for a variance, the Application must be denied. For the sake of administrative and quasi-judicial economy, this Notification of Decision will not discuss the remainder of the criteria of IDO 6-6-(O)(3)(a), because they are

moot in light of the failure to satisfy IDO Section 6-6(O)(3)(a)(1), which failure is dispositive of the Application.

DECISION:

DENIAL of a variance of .1405 acres to the required contextual lot size of .5816 acres.

APPEAL:

If you wish to appeal this decision, you must do so by May 19, 2022 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.
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cc:

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CITY OF ALBUQUERQUE
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ZONING HEARING EXAMINER
NOTIFICATION OF DECISION

Las Ventanas NM, INC (Agent, Consensus Planning) requests a variance of .1405 acres to the required contextual lot size of .5816 acres for Lot 3, Block 17, N. Albuquerque Acres Tract 1 Unit 3, located at 8400 Glendale Ave NE, zoned R-1D [Section 14-16-5-1(C)(2)(b)]

Special Exception No:..... **VA-2022-00056**
Project No: **Project#2019-002573**
Hearing Date: 04-19-22
Closing of Public Record: 04-19-22
Date of Decision: 05-04-22

On the 19th day of April, 2022, Consensus Planning, agent for property owner Las Ventanas NM, INC (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of .1405 acres to the required contextual lot size of .5816 acres (“Application”) upon the real property located at 8400 Glendale Ave NE (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of .1405 acres to the contextual lot size of .5816 acres required by the City Integrated Development Ordinance (IDO) Section 5-1(C)(2)(b) Lot Size, which states in pertinent part:

In any Residential zone district in an Area of Consistency, the minimum and maximum lot sizes for construction of new low-density residential development shall be based on the size of the Bernalillo County Tax Assessor’s lot, or a combination of adjacent Tax Assessor’s lots, on the portions of the blocks fronting the same street as the lot where the new low-density residential development, is to be constructed, rather than on the size of the individual subdivision lots shown on the existing subdivision plat.

1. *New low-density residential development shall not be constructed on a Tax Assessor’s lot, or combination of abutting Tax Assessor’s lots, that is smaller than 75% of the average of the size of the Tax Assessor’s lots, or combinations of adjacent Tax Assessor’s lots, that contain a primary building on those blocks.*
2. The IDO Variance-Review and Decision Criteria are set forth in IDO Section 14-16-6-6(O)(3)(a), which 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. 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. 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. The proper “Notice of Hearing” signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
 6. Applicant has authority to pursue this Application
 7. All property owners within 100 feet of the subject property and the affected neighborhood association were notified.
 8. The Subject Property is currently zoned R-1D.
 9. The Subject Property is located in an Area of Consistency.
 10. A pre-application facilitated meeting was held on February 8, 2022, as evidenced by the Land Use Facilitation Program Project Meeting Report dated February 9, 2022, which is in the record in this matter. In addition to Agent and Applicant representatives, three community participants attended, who were affiliated with the District 4 Coalition and the Nor Este Neighborhood Association, respectively. According to the facilitated meeting report, these community participants expressed concerns about using a variance as the zoning mechanism to allow for smaller lots in this area, as it could set a negative precedent. However, the facilitated meeting report states that the community participants were not opposed to the specific lot sizes proposed in the Application.
 11. City Transportation submitted a report stating no objection.
 12. Agent and Applicant representatives appeared at the April 19, 2022 ZHE hearing and gave evidence in support of the Application.
 13. Several neighbors of the Subject Property appeared at the April 19, 2022 ZHE hearing and testified in opposition to the Application, citing concerns over consistency of the IDO and neighborhood expectations, property values, drainage, and other matters, while one neighbor appeared generally supportive of the Application. Several opposing neighbors stated that they purchased their respective properties based at least in part on expectations that the open characteristics of the neighborhood resulting from the relatively large size (nearly one-acre each) of the lots in the area would be preserved by zoning.
 14. The Application does not satisfy the requirements of IDO Section 14-16-6-6(O)(3)(a)(1), the text of which appears, below, in italics, with discussion as to each component part following in plain text:

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.

- a. Applicant's written justification states in response to this criterion that the ". . . special circumstance affecting the subject parcels is the larger size by acreage compared to surrounding lots. Both subject parcels are the same size as adjacent lots on the south side of Glendale Avenue. However, they are larger than many of the lots in the surrounding area, which includes a mix of lot sizes and single-family housing types."
- b. In reviewing the applicable IDO Zone Atlas Page B-209-Z, as well as the aerials and photos submitted by Applicant, it appears that of the 32 originally platted nearly one-acre lots along either side of Glendale Ave NE on the same block as the Subject Property, only 3 have been subdivided into smaller lots. If the same review is applied to the north side of Modesto Ave NE to the south of and within the same block as the Subject Property, and to the south side of Florence Ave NE located in the block to the north of the Subject Property, it likewise appears that only 3 of the 32 originally platted nearly one-acre lots in that area have been subdivided into smaller lots. Stated another way, it appears based on evidence in the record that only 6 out of 64 (less than 10%) of the originally platted nearly one-acre lots in Block 17 (where the Subject Property is located) and Block 16 (across Glendale and immediately north of the Subject Property), N. Albuquerque Acres Tract 1 Unit 3, have been subdivided into smaller lots.
- c. While smaller lots exist farther west and south of the Subject Property than Blocks 16 and 17, the ZHE finds that such outlying lots are outside the appropriate area of inquiry, because of their distance from the Subject Property and/or their having different zone designation than the Subject Property.
- d. Consequently, the approximately one-acre size of the Subject Property does not constitute a special circumstance. The evidence shows that lots smaller than approximately one-acre are the exception rather than the rule in the relevant area of inquiry.

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.

- a. As stated, above, it does not appear that the Application identifies a special circumstance that applies to the Subject Property and not generally to other property in the same zone and vicinity. Even assuming for the sake of argument that the characteristics identified by Applicant and Agent would constitute special circumstances under the IDO, it is not apparent that such characteristics cause an extraordinary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the property, or that practical difficulties result from strict compliance with the applicable minimum standards.
- b. For instance, nothing in the record would appear to limit the owner of the Subject Property from developing a single family home on the existing nearly

one-acre Subject Property and another single family home on the existing subject lot of the companion application (also listed under PR-2019-002573), in accordance with IDO standards. The existence of such homes within Block 17 (where the Subject Property is located) and Block 16 (across Glendale and immediately north of the Subject Property), N. Albuquerque Acres Tract 1 Unit 3, indicate that there is some demand for such homes.

- c. Further, Applicant's justification letter states that each of the Subject Property and the subject lot of the companion application (also listed under PR-2019-002573) are approximately 0.8864-acre in size. Therefore, the total area of Applicant's two lots regarding which the variances are requested under PR-2019-002573 is approximately 1.7684 acres. The Application further states that the minimum contextual lot size required by IDO Section 5-1(C)(2)(b) is 0.5816 acre. It follows that Applicant's two lots comprising together approximately 1.7684 acres would appear to be subdividable into three parcels with a minimum lot size of 0.5816 acre each ($1.7684/0.5816=3.09377$). Thus, it appears Applicant could develop three single family homes, one each on three separate lots created from the Subject Property and the subject lot of the companion application, without the need for a variance.
- d. Applicant's justification letter further argues that "There is very little demand in the Albuquerque housing market for extra-large lots of nearly one acre and extra-large single-family homes. According to Realtor.com, as of January 2022, 0.88-acre lots east of the subject parcels have been on the market for 473 days. Developed .24-acre lots west of Barstow Street were on the market for nine days before they were sold." However, Applicant testified that its plans are to develop, build, and sell single family homes on the Subject Property, not sell vacant lots. The quoted evidence regarding vacant lots therefore would appear inapposite, or at least not an "apples to apples" comparison with Applicant's planned single family homes. There does not appear to be specific evidence in the record as to the market demand for single family homes, but the ZHE surmises from circumstantial evidence in the record that market demand for finished single family homes is substantial (see, e.g., Applicant's justification letter at page 7 (citing the goal to "help alleviate housing demand in the City"))).

Therefore, The ZHE must conclude that the criteria in IDO Section 6-6(O)(3)(a)(1) are not satisfied.

15. The ZHE appreciates that Applicant seeks to build high-quality, attractive homes on its lots. It appears from the record that there is a community need for additional housing and that Applicant would stand to profit from delivering such development. In that context, the Application does not appear unreasonable. Nevertheless, the ZHE's task is not to grant approvals based on the reasonability of a given application, but rather to apply the IDO and other applicable law to the facts in evidence, to determine whether substantial evidence exists to satisfy all legal requirements.
16. Because the criteria in IDO Section 6-6(O)(3)(a)(1) are not satisfied, and all criteria of IDO 6-6-(O)(3)(a)(1) through -(5) must be satisfied to qualify for a variance, the Application must be denied. For the sake of administrative and quasi-judicial economy, this Notification of Decision will not discuss the remainder of the criteria of IDO 6-6-(O)(3)(a), because they are

moot in light of the failure to satisfy IDO Section 6-6(O)(3)(a)(1), which failure is dispositive of the Application.

DECISION:

DENIAL of a variance of .1405 acres to the required contextual lot size of .5816 acres.

APPEAL:

If you wish to appeal this decision, you must do so by May 19, 2022 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.



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