



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

Joey Castillo (Agent, Stephen Arguellos) requests a variance of 0.2254 acres to combine 3 lots for a lot larger than the contextual lot size allows for Lot A24, Block 4, Vista Magnifica, located at 1748 Cliffside DR NW, zoned R-T, Section 14-16-5-5(C)(2)(b)(3)]

Special Exception No:..... **VA-2022-00012**
Project No: **Project#2022-006451**
Hearing Date: 02-15-22
Closing of Public Record: 02-15-22
Date of Decision: 03-02-22

On the 15th day of February, Stephen Arguellos, agent for property owner Joey Castillo (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 0.2254 acres to combine 3 lots for a lot larger than the contextual lot size allows (“Application”) upon the real property located at 1748 Cliffside DR NW (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 0.2254 acres to combine 3 lots for a lot larger than the contextual lot size allows.
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.”*
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. Applicant appeared and gave evidence in support of the Application.
6. City Transportation submitted a report stating no objection.
7. The proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
8. The Applicant has authority to pursue this Application
9. All property owners within 100 feet of the subject property and the affected neighborhood association were notified.
10. The subject property is currently zoned R-T.
11. Applicant has failed to 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:

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.

Applicant's written justification states in response to this criterion that the Subject Property "Will not cause a hardship within the vicinity but rather add value to the neighborhood." This statement does not identify any special circumstance. When requested at the February 15 ZHE hearing on this matter to elaborate on the existence of any special circumstance, Applicant submitted evidence that the Subject Property is located on a hill with topography sloping downward toward the Rio Grande, which provides for appealing views to the east and may necessitate earthwork. This downward sloping topography appears from photographs and testimony submitted to apply generally to nearly all lots in the vicinity. Applicant and Agent also stated that the proposed use of the property as a single family home is permissive in the applicable R-T zone. The assertion that having a single-family home residence in the R-T zone is a permissive use does not constitute or create any special circumstance applicable to the Subject Property.

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.

As stated, above, it does not appear that Applicant or Agent have identified any 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 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. For instance, nothing in the record would appear to limit the owner of the Subject Property from developing three

separate townhomes (one on each existing lot) in accordance with the IDO minimum standards.

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

12. 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, the ZHE will not examine 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 is dispositive of the Application.

DECISION:

DENIAL of a variance of 0.2254 acres to combine 3 lots for a lot larger than the contextual lot size allows.

APPEAL:

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

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