



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

Samuel Jacob Reynolds (Agent, Dave Bennett) requests a variance of 2 ft 9 inches to allow for a courtyard wall in the side yard setback for Lot 20, Block 14, Broadmoor Addn, located at 4200 Brockmont Ave NE, zoned R-1B [Section 14-16-5-7(D)(1)]

Special Exception No:..... **VA-2022-00016**
Project No: **Project#2021-006330**
Hearing Date: 02-15-22
Closing of Public Record: 02-15-22
Date of Decision: 03-02-22

On the 15th day of February, 2022, Dave Bennett, agent for property owners Samuel Jacob Reynolds (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 2 ft 9 inches to allow for a courtyard wall in the side yard setback (“Application”) upon the real property located at 4200 Brockmont Ave NE (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 2 ft 9 inches to allow for a courtyard wall in the side yard setback.
2. This matter was continued from the ZHE’s January 18, 2022 hearing, because of evidence that the “Notice of Hearing” signage was not posted in accordance with IDO requirements.
3. Applicant testified at the February 15, 2022 ZHE hearing that the necessary signage was posted in accordance with IDO requirements. The ZHE finds that the proper “Notice of Hearing” signage was posted as required by Section 14-16-6-4(K)(3).
4. The ZHE finds that the Applicant has authority to pursue this Application.
5. 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.”

6. 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).
7. 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).
8. Agent and Applicant appeared and gave evidence in support of the 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-1B.
11. The Nob Hill Neighborhood Association submitted evidence and testimony in opposition to the Application to the extent in involves a front yard wall. These objections are germane to Applicant’s request under VA-2021-00449, the companion case to the Application, but the neighborhood association testified that it does not object to the street side wall at issue here.
12. Several neighbors in the vicinity of the Subject Property submitted evidence and testimony in favor of the Application, and complimented the design, construction and appearance of the wall in question.
13. 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 and provided written evidence that, the Subject Property has special circumstances because of its location in reference to neighboring properties and the location of pre-existing improvements on the parcel, which give rise to the need for this request. The property is located in an area that transitions from heavily trafficked commercial uses along busy Lomas Blvd only one block to the north, toward more consistently single family home and other residential uses to the south. Applicant testified that the Subject Property is a single family home, but several other residential properties in the immediate vicinity are multi-unit rental housing structures (tri-plex, 4-plex). The location of the Subject Property on a corner lot does not, in and of itself, constitute a special circumstance. However, when combined with the location of the property in relation to an extremely busy thoroughfare, commercial uses, and multifamily uses, the location of the property makes it subject to decreased privacy and other negative impacts. Under the totality of the circumstances, these combine to impose special circumstances upon the Subject Property. These special circumstances create an extraordinary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the Subject Property, because compliance with the minimum standards would not allow for the reasonably proposed use that otherwise would be in compliance with the IDO
14. 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, if the variance is

granted, the proposal would be consistent with the IDO and the Development Process Manual (DPM).

15. 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 proposal is designed to be in harmony and consistency with what currently exists in the neighborhood, which was supported by written evidence and oral testimony. Photographs were submitted showing the neighborhood. The proposal would not be out of character with the surrounding area, but rather would reinforce the architectural character of the neighborhood by being in harmony with the other improvements existing and proposed for the Subject Property and the area. Several neighbors testified and submitted written evidence in support.
16. 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 be in harmony with existing uses and the proposed variance would merely add to the safety and usability of the site.
17. 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 submitted evidence that any smaller variance would be ineffective to provide for the usability of the site. Thus, the applicant is not requesting more than what is minimally necessary for a variance.
18. City Transportation submitted a report stating no objection.

DECISION:

APPROVAL of a variance of 2 ft 9 inches to allow for a courtyard wall in the side yard setback.

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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