



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

Nicole Ackerman requests a variance of 30 ft to the required 45 ft landscape buffer adjacent to the Petroglyph National Monument for Lot 12, Block 6, Volcano Cliffs Unit 22, located at 6204 Camino Alto NW, zoned R-1D [Section 14-16-5-2(j)(2)(a)]

Special Exception No: **VA-2023-00288**
Project No: **Project#2023-009336**
Hearing Date: 12-19-23
Closing of Public Record: 12-19-23
Date of Decision: 01-03-24

On the 19th day of December, 2023, property owner Nicole Ackerman (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 30 ft to the required 45 ft landscape buffer adjacent to the Petroglyph National Monument (“Application”) upon the real property located at 6204 Camino Alto NW (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 30 ft to the required 45 ft landscape buffer adjacent to the Petroglyph National Monument.
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 this IDO, the applicable zone district, or any applicable Overlay Zone.*
 - (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. Agent appeared at the ZHE hearing on this matter and gave evidence in support of the Application.
6. Applicant established that the proper "Notice of Hearing" signage was posted for the required time period.
7. Applicant established that all property owners and neighborhood association entitled to notice were notified of the Application.
8. Applicant established that proper notice was provided pursuant to IDO requirements.
9. Applicant has authority to pursue this Application.
10. The subject property is currently zoned R-1D.
11. 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(O)(3)(a)(1). Specifically, Applicant confirmed in oral testimony and submitted evidence that, the Subject Property's shape and layout based on historic platting and development under prior approval regimes, as well as the location of infrastructure on site and on neighboring land, create special circumstances. 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 request, which otherwise would comply the IDO.
12. However, the Application does not establish that the proposed variance is the minimum necessary to avoid extraordinary hardship or practical difficulties as required by Section 14-16-6-6(O)(3)(a)(5). Applicant's written justification states in support of this prong that "the building envelope is not big enough as is," without further explanation. At the hearing, the ZHE inquired whether any requirement of a minimum home size existed and if, so, what it would be, but Agent and Applicant did not provide any substantive response. It is therefore uncertain why any smaller house could not be constructed, thereby requiring a smaller variance.
13. Because all prongs of the variance test must be satisfied and, as stated above, the Application failed to satisfy the above-stated prongs of the test, the Application must be denied.
14. Out of considerations of administrative and quasi-judicial economy, the ZHE will not summarize any analysis of the remaining prongs of the test in this Notification of Decision.

DECISION:

DENIAL of a variance of 30 ft to the required 45 ft landscape buffer adjacent to the Petroglyph National Monument.

APPEAL:

If you wish to appeal this decision, you must do so by January 18, 2024 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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