



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

Carlos Zamora requests a variance of 40 ft to the required 45 ft open space buffer as indicated on the final plat for Lot 17A, Block 7, Volcano Cliffs Unit 5, located at 8001 Shiprock CT NW, zoned R-1D [Section 14-16-5-2(J)(2)(a)(1)]

Special Exception No: **VA-2023-00038**
Project No: **Project#2022-006500**
Hearing Date: 05-16-23
Closing of Public Record: 05-16-23
Date of Decision: 05-31-23

On the 16th day of May, 2023, property owner Carlos Zamora (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 40 ft to the required 45 ft open space buffer as indicated on the final plat (“Application”) upon the real property located at 8001 Shiprock CT NW (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 40 ft to the required 45 ft open space buffer as indicated on the final plat.
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. Applicant and 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 has authority to pursue this Application.
9. The City Traffic Engineer submitted a report stating no objection to the Application.
10. The Subject Property is currently zoned R-1D.
11. The Subject Property is located within Volcano Vista – CPO-13.
12. The Subject Property is located adjacent to the Petroglyph National Monument, which is a Major Public Open Space under the IDO.
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(O)(3)(a)(1). Specifically, Applicant confirmed in oral testimony and submitted evidence that, the Subject Property's pre-IDO platting and subsequent replatting at the apparent behest of the City, as well as the Subject Property's location on a cul-de-sac and unusual shape as a result of the Subject Property's replatting, 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 use, which 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(O)(3)(a)(2). Specifically, evidence was submitted supporting that, if granted approval, the Applicant intends to construct the proposed project in a manner that is consistent with the IDO and the Development Process Manual (DPM). Applicant must still satisfy all variance criteria, as well as all other applicable IDO and other City criteria.
 - a. Neighborhood association representatives, neighbors, the National Park Service and the City Open Space Division raised concerns regarding the potential impact of the proposed setback on views and enjoyment of open space and the Petroglyph National Monument.
 - b. However, evidence shows that almost every other developed lot along the Petroglyph National Monument boundary violates the 45-foot setback from which the Application seeks a variance. From testimony, it appears that many other properties along the Petroglyph National Monument have a setback of approximately fifteen feet from the rear yard boundary bordering the monument.
 - c. Based on these facts, it does not appear that adhering to the established setback pattern of the neighborhood would be contrary to the public safety, health and welfare of the community. Both Applicant and neighborhood association opponents appeared to agree that the vast number of properties in the vicinity adjacent to the Petroglyph National Monument to their rear yard already have structures within 15 feet of the Monument. While allowing any structures closer to the Monument may cause harm, it

does not appear from the record that the existing structures cause any harm. It would therefore be appropriate to condition the proposed variance to not exceed a similar fifteen-foot setback from the rear yard boundary, consistent with the existing pattern of development.

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(O)(3)(a)(3). Specifically, the proposal is designed to be in harmony and consistency with what currently exists in the neighborhood, including rights of way and infrastructure.
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(O)(3)(a)(4). Specifically, Applicant confirmed in written submittals 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 useability of the site.
 - a. IDO Section 14-16-4-3(F)(5)(e)(9) states “[a]ccessory dwelling units with a kitchen are a permissive accessory use in the Volcano Mesa – CPO-13. An accessory dwelling unit shall not exceed 750 square feet of gross floor area. A garage or shed attached to the accessory dwelling unit shall not count toward this size limit.” This subsection is silent as to setbacks for accessory buildings in Volcano Vista – CPO-13.
 - b. IDO Section 14-16-5-1(G), pertaining to exceptions and encroachments as to dimensional standards, states that “[r]equired setback areas other than the exceptions allowed in Table 5-1-4 shall be open and unobstructed from the ground upward.”
 - c. In turn, Table 5-1-4 states that accessory buildings “[m]ay encroach any amount into a required side or rear setback, subject to the with Articles 14-1, 14-2, and 14-3 of ROA 1994 (Uniform Administrative Code and Technical Codes, Fire Code, and Uniform Housing Code). Table 5-1-4 does not otherwise qualify this blanket exception to setbacks for accessory buildings, nor does it make any reference to Volcano Vista – CPO-13.
 - d. IDO Section 14-16-3-4(N) sets out the character protection overlay zone regulations for Volcano Vista – CPO-13. Subsection 3-4(N)(2) references general setback standards, not specific to accessory buildings. Subsection 3-4(N)(5)(c) describes certain setback requirements applicable to residential garages, which do not appear to apply to the Subject Property, because the proposed garage is located toward the front and not the rear of the Subject Property.
 - e. IDO Section 14-16-3-4(N)(6)(e) makes cross-reference to Subsection 14-16-6-4(P)(3)(e) (Deviations to Overlay Standards Not Allowed) [sic (the ZHE believes this cross reference should be to Subsection 14-16-6-4(O)(3)(e))]. However, Applicant is not applying for a Deviation under 6-4(O), he is applying for a Variance-ZHE under 14-16-6-6(O).
 - f. Much of Applicant’s argument appears aimed at convincing the ZHE that the requirements under IDO Section 5-2(J) (Major Public Open Space Edges) and subsections do not apply to the Subject Property. If that is the case, then it would appear that the Application, which seeks a variance to Section 5-2(J), would be misplaced. Nonetheless, the ZHE finds that Section 5-2(J) does apply to the Application, and that a variance to the requirements of Section 5-2(J) would be appropriate, subject to the condition of this Notification of Decision.

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(O)(3)(a)(5). Specifically, Applicant submitted evidence that any smaller variance would be ineffective to provide for the useability of the site, given the site dimensions. Thus, the applicant is not requesting more than what is minimally necessary for a variance.
18. The requirements of IDO Section 14-16-6-6(O)(3)(a) are satisfied, with the following condition.

DECISION:

APPROVAL WITH CONDITION of a variance to the required 45 ft open space buffer as indicated on the final plat.

CONDITION:

The variance approved by this Notification of Decision is limited to 30 feet into the required 45 foot open space buffer as indicated on the final plat, such that encroachment within 15 feet of open space is prohibited.

APPEAL:

If you wish to appeal this decision, you must do so by June 15, 2023 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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