



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

Joe Romero (Agent, Maia Martin)
requests a variance of 9 ft 11 ½ inches to
the required 45 ft open space landscape
buffer for Lots 8-A-1 & 8-A-2, Block 2,
Volcano Cliffs Unit 19, located at 7805
Aguila ST NW, zoned R-1D [Section 14-
16-5-2(J)(2)(a)(1)]

Special Exception No: **VA-2023-00365**
Project No: **Project#2023-009649**
Hearing Date: 1-16-24
Closing of Public Record: 1-16-24
Date of Decision: 01-31-24

On the 16th day of January, 2024, Maia Martin, agent for property owner Joe Romero (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 9 ft 11 ½ inches to the required 45 ft open space landscape buffer (“Application”) upon the real property located at 7805 Aguila ST NW (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 9 ft 11 ½ inches to the required 45 ft open space landscape buffer.
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 in the record, it appears that there are no 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). Applicant asserts that there are special circumstances because of past platting actions taken by the owner of the Subject Property and the neighboring property at 7809 Aguila. It would appear that these platting actions are self-imposed. Also, Applicant does not demonstrate the assertion stated in Applicant's justification letter that "all lots that surround this area do not have a 45' landscape buffer" because of plats approved before 2019. It would appear that a mere plat approval (without further action to vest development rights) before a change to the setbacks by zone amendment would control in spite of that zone amendment.
12. Further, even if there were a special circumstance, the evidence does not demonstrate how such a circumstance would 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. Agent stated that Applicant would have to pay in the realm of \$10,000 to redesign house plans to build in accordance with the IDO. Given the overall development budget of the proposed construction, this amount does not appear to rise to the level of an extraordinary hardship.
13. Similarly, the evidence 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). At the January 17, 2024 hearing, the ZHE inquired whether the home could be constructed closer to the front property line, given that the site plans showed a good deal of unused space between the proposed location of the home and the front yard setback. The ZHE inquired whether massing the home square footage toward the front yard setback would yield more space in the back sufficient to comply with the 45' setback requirement. Agent responded that such a change would require an architectural redesign costing in the realm of \$10,000 to redesign house plans, as cited, above. It is therefore uncertain why a same sized house could not be constructed closer to the front yard, or why a smaller house could not be constructed, in either case requiring a smaller, or no, variance.
14. 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.
15. 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 9 ft 11 ½ inches to the required 45 ft open space landscape buffer.

APPEAL:

If you wish to appeal this decision, you must do so by February 15, 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.



Robert Lucero, Esq.
Zoning Hearing Examiner

cc:

ZHE File
Zoning Enforcement
Jane Beckley, Santa Fe Village Neighborhood Association