



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

Nicole Ackerman (Agent, Consensus Planning Inc) requests a variance of 30 ft to the required 45 ft open space landscape buffer for Lot 12, Block 6, Volcano Cliffs Unit 22, located at 6204 Camino Alto NW, zoned R-1D [14-16-5-2(J)(2)(a)(1)]

Special Exception No:
Project No:
Hearing Date:
Closing of Public Record:
Date of Decision:

VA-2024-00094
PR-2024-010171
6-18-24
6-18-24
7-03-24

On the 18th day of June, 2024, Nicole Ackerman (Agent, Consensus Planning Inc) appeared before the Zoning Hearing Examiner (“ZHE”) requesting requests a variance of 30 ft to the required 45 ft open space landscape buffer (“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 open space landscape buffer.
2. The ZHE finds that the Applicant has authority to pursue this Application.
3. All property owners within 100 feet and affected neighborhood association(s) were notified.
4. The ZHE finds that the proper “Notice of Hearing” signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
5. The City of Albuquerque Integrated Development Ordinance (“IDO”), 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 a single lot that are not self-imposed and that do not apply generally to other property in the same zone district and vicinity, including but not limited to size, shape, topography, location, surroundings, physical characteristics, natural forces, or by government actions for which no compensation was paid. Such special circumstances of the lot either create an extraordinary hardship in the form of a substantial and unjustified limitation on the reasonable use or economic 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.”*

6. 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. Applicant appeared and gave evidence in support of the application.
9. The subject property is currently zoned R-1D.
10. 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). 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 create special circumstances. Specifically, the lot is unusually shaped, located on a cul-de-sac, with the longest boundary abutting the Petroglyphs National Monument. The lot is much wider than it is deep, and the cul-de-sac creates a concave front yard boundary, pushing the front yard setback even further toward the back yard. This results in a buildable envelope that is wide, but not relatively deep..
11. These special circumstances create a substantial and unjustified limitation on the reasonable use or return on the property, and practical difficulties resulting from strict compliance with the minimum standards. Although there is discussion in the record of financial return not being an appropriate consideration for a variance, the IDO clearly lists a substantial and unjustified limitation on the reasonable return on the property as an element for analysis. Further, the reasonability of the proposed variance is likewise to be considered. Here, the Applicant has reduced her requested variance from 30 feet to 20 feet, which would result in a 25-foot landscape buffer. Applicant submitted evidence of the resulting building envelope in relation to that of other lots in the vicinity. This evidence was not controverted. Based on the building envelopes in the surrounding area, limiting the building envelope beyond the requested variance would be a substantial and unjustified limitation on the reasonable use or return on the property, and practical difficulties resulting from strict compliance with the minimum standards. Even with the requested variance, the Subject Property will be the lowest percentage building envelope for the peer lots and for the neighborhood as a whole, even smaller than that of the smaller lots in Petroglyph Estates.
12. 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). Although evidence was submitted indicating that construction pursuant to the proposed variance could negatively affect property values, evidence was also submitted to the contrary. City Transportation submitted correspondence stating no objection to the Application. On balance the variance will not be contrary to the public safety, health and welfare of the community.
13. 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). Based on the record, no adverse impacts to infrastructure improvements will occur. Although a neighbor

two lots to the west objected to potential negative impacts to his view of the Sandias, the photographs and site plans submitted into the record do not establish that any view impairment would be significant, especially given that: (a) the lot between the Subject Property and the opponent's lot has yet to be developed and could as of right be developed in a manner more impactful on the opponent's view than any impact caused by the Subject Property; and (b) the site plan of the Subject Property submitted into the record contains greater rear-yard setbacks closer to the western and eastern boundaries of the Subject Property, which would mitigate any impact on views.

14. 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).

a. Applicant submitted evidence and justification that:

- i. The IDO's restriction on setbacks of structures within proximity of the Petroglyph National Monument is to protect the Open Space from bordering properties.
- ii. The Subject Property will follow regulations set by the zone district, and the applicable Overlay Zone (Volcano Mesa – CPO-13) by adhering to the restrictions on building height and setbacks on all other sides of the Subject Property.
- iii. The Subject Property will not materially harm the open space, as the proposed home would still be set back from the property line, to a greater extent than other structures in the vicinity, and will be screened appropriately.
- iv. The intent of the IDO will not be undermined through this Variance, which aims to establish uniformity in building style in the area abutting Petroglyph National Monument.
- v. The construction of the proposed home will serve to reinforce other standards set by the IDO, strengthening the area through more appealing, uniform development in line with existing homes in the vicinity.

b. An opponent argued that the Application should be denied based on the ZHE Rules of Procedure, because the Application was submitted to the ZHE within one year of the ZHE's denial of a variance of the same type of variance at the Subject Property (the "1-Year Rule"). Although, the 1-Year Rule was contained in pre-IDO versions of the City zoning code, there appears no express 1-Year Rule in the current version of the IDO applicable to the Application. As such, the ZHE Rules of Procedure are inconsistent with the IDO as to a substantive right – the right to apply for a land use entitlement. IDO Section 6-4(M)(2) provides, in pertinent part, that the ZHE is "*authorized to create rules, procedures, or practices governing its conduct of public hearings.*" It is apparent from Section 6-4(M)(2) that the ZHE Rules of Procedure therefore may govern only the conduct of ZHE hearing, not the substantive rights of parties. This is made clearer by the definition of the ZHE in IDO Section 7-1: "*A person or firm on contract with the City who reviews and decides applications for Conditional Use Approvals, Expansions of Nonconforming Use or Structure, Permit – Carport, Permit – Wall or Fence – Major, and Variances.*" Although the City Council, as the City's ultimate planning and zoning authority, has delegated to the ZHE the limited authority to review and decide the aforementioned applications and to create procedural rules governing the conduct

of ZHE hearings, it does not appear that City Council delegated to the ZHE any right to legislate rules that would define or alter the substantive rules of parties. Consequently, it would not be proper for the ZHE to enforce the 1-Year Rule contained in the ZHE Rules of Procedure. The ZHE plans to revise its Rules of Procedure, pursuant to the IDO, to bring it into harmony with the latest revision of the IDO.

15. Based on evidence submitted by or on behalf of Applicant, the requested variance is the minimum necessary to avoid extraordinary hardship or practical difficulties as required by Section 14-16-6-6(N)(3)(a)(5). Applicant established that the variance, which was reduced from the initial Application, is the minimum necessary to avoid extraordinary hardship or practical difficulties. See discussion of extraordinary hardship and practical difficulties, above. Although, as opponents argue, it would be possible to build a residential structure within the existing setbacks, such a structure would present an extraordinary hardship and practical difficulties of design.

DECISION:

APPROVAL WITH CONDITION of a variance of 20 ft to the required 45 ft open space landscape buffer (resulting in a 25-foot landscape buffer).

CONDITION:

The landscape buffer must comport with the site plan submitted by Applicant most recently into the record on the Application, attached to this Notification of Decision as **EXHIBIT A**.

APPEAL:

If you wish to appeal this decision, you must do so by July 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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Zoning Hearing Examiner

cc:

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