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

Amanda Gessler (Agent, Beaver's Pools and Spas LLC/ Cache Beaver) requests a 324ft buffer to the required 330ft MPOS buffer for Lot 52-P1, Block A, Paradise Bluff Unit 1, located at 5112 Marcadas Rd NW, zoned R-1C [Section 14-16-5-2(J)(2)(c)(1)]

Special Exception No:	**VA-2024-00327**
Project No:	**PR-2023-011304**
Hearing Date:	01-21-25
Closing of Public Record:	01-21-25
Date of Decision:	02-05-25

On the 21st day of January, 2025, Beaver's Pools and Spas, agent for property owner Amanda Gessler ("Applicant") appeared before the Zoning Hearing Examiner ("ZHE") requesting a variance of 324ft buffer to the required 330ft MPOS buffer ("Application") upon the real property located at 5112 Marcadas Rd NW ("Subject Property"). Below are the ZHE's finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 324ft buffer to the required 330ft Major Public Open Space ("MPOS") buffer.
2. From testimony of Applicant and City Staff at the ZHE hearing, it became apparent that Applicant seeks a 39 foot variance to the required 45 foot open space buffer. The ZHE finds that notice of the Application as given was sufficient to inform concerned parties that a variance was sought to a MPOS buffer at the Subject Property.
3. The ZHE finds that the Applicant has authority to pursue this Application.
4. All property owners within 100 feet and affected neighborhood association(s) were notified.
5. 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(J)(4).
6. 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."*

7. 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).
8. 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).
9. Applicant appeared and gave evidence in support of the application.
10. The subject property is currently zoned R-1C.
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(N)(3)(a)(1). Specifically, the location and layout of the Subject Property in relation to existing structures, open space and infrastructure create special circumstances that result in practical difficulties in complying strictly with IDO requirements without the requested variance.
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). Applicant stated that no negative impacts would result. The City Open Space Division submitted email correspondence questioning how Applicant will carry out construction of the proposed pool without entering onto, damaging or otherwise negatively impacting open space, as well as how the pool will be drained and cleaned without impacting open space. Applicant responded to City Open Space that the construction would be carried out entirely through front yard access with no encroachment, entering upon, or damaging of open space, and that pool drainage would likewise occur through front yard access. No City Open Space representative appeared at the ZHE hearing to testify and there is no evidence of any objection or of any further concern by City Open Space.
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). Applicant stated that it would cause no visual or other negative impact. An adjacent neighbor submitted written evidence and testimony that the pool would negatively impact their peace and quiet and views. While the ZHE empathizes with the opponent's desire to have an enjoyable retirement, it appears to the ZHE that the noise of children playing in a pool would be no louder than children playing in Applicant's backyard, which is allowable whether or not this variance is approved. Also, the Applicant's submitted construction plans propose only a pool and no vertical structure within the variance area, and therefore no visual impact will result.
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). Applicant intends to comply with all IDO requirements and the proposed development of a backyard swimming pool is consistent with the residential character of the underlying R-1C zone district.

15. Based on evidence submitted by or on behalf of Applicant, the variance 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 testified and established with photographs and site plans that any lesser variance would be impracticable.
16. The City Traffic Engineer submitted a report stating no objection to the Application.

DECISION:

APPROVAL WITH CONDITION of a variance of 39 feet to the required 45 foot MPOS buffer.

CONDITION:

No vertical structure is allowed in the variance area; only a swimming pool and related infrastructure improvements are allowed to be developed in the variance area.

APPEAL:

If you wish to appeal this decision, you must do so by February 20th, 2025 pursuant to Section 14-16-6-4(U), 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: ZHE File
Zoning Enforcement
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