



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

Kenneth Cooper requests a variance of 0.074 acres to allow a lot larger than the allowable contextual standards for Lot 1, 2 and 3, Block 4, Anderson Add No 2, located at 1402 8th ST NW, zoned R-1A [Section 14-16-5-1(C)(2)(b)2]

Special Exception No:..... **VA-2019-00197**
Project No:..... **Project#2019-002490**
Hearing Date:..... 07-16-19
Closing of Public Record: 07-16-19
Date of Decision: 07-31-19

On the 16th day of July, 2019, property owner Kenneth Cooper ("Applicant") appeared before the Zoning Hearing Examiner ("ZHE") requesting a variance of 0.074 acres to allow a lot larger than the allowable contextual standards ("Application") upon the real property located at 1402 8th ST NW ("Subject Property"). Below are the ZHE's findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 0.074 acres to allow a lot larger than the allowable contextual standards.
2. The City of Albuquerque Integrated Development Ordinance, Section 14-16-6-6(N)(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 the IDO or the applicable zone district.*
 - (5) *The Variance approved is the minimum necessary to avoid extraordinary hardship or practical difficulties.*
3. The Applicant bears the burden of ensuring there is evidence in the record supporting a finding that the above criteria are met under Section 14-16-6-4(N)(1).
4. Kenneth Cooper, property owner appeared and gave evidence in support of the application.
5. The address of the subject property is 1402 8th St. NW.

6. All property owners within 100 feet of the subject property and the affected neighborhood association were notified.
7. Wells Park Neighborhood Association and Sawmill Community Land trust are the affected neighborhood associations.
8. The subject property is currently zoned R-1A.
9. The subject property is within Character Protection Overlay CPO-11.
10. The variance is from 14-16-5-1: Development Standards; *Dimensional Standards*; 5-1(C)(2)(b)2. Lot Size.
11. The request is to allow replat of 3 lots (lots 1, 2 and 3) on the northeast corner of 8th St. NW and McKinley Ave. NW into a single lot.
12. Applicant then intends to construct a single story, single family residence on the property.
13. A site plan and accompanying photographs were submitted in support of the Application.
14. The subject lots were originally platted in 1922, the lots being 27 feet wide X 130 feet long, (which is the older lot size).
15. A single family adobe residence was constructed on lots 2 and 3, with an enclosing wall across all 3 lots in 1930.
16. An aerial photograph dated 1969 was submitted in support, which shows the same single family residence with the wall across all 3 lots.
17. Applicant purchased the subject property over a year ago, prior to implementation of the IDO in 2018, which changed dimensional standards on the subject property.
18. Applicant submitted aerial photographs of the subject properties, dated 3-25-1969, which evidences a wall across all three lots along the 8th St. NW frontage and a single residence on the 3 lots.
19. Applicant submitted current photographs of the subject property showing the same wall and the dilapidated and deteriorated nature of the current residential building.
20. Applicant submitted a Boundary Survey of the subject properties.
21. Applicant submitted a Sanborn Insurance map, circa 1942.
22. An Affidavit from Pedro J. Placencio, dated July 7, 2019, was submitted in support of the request, attesting to the fact that he has lived in the neighborhood, near the subject property since 1963, and that the subject property has been occupied and used as a single lot since at least that year.
23. An e-mail from David Colbert, dated May 27, 2019, was submitted in partial opposition and partially support of the request.
24. He is the owner of properties to the south and southwest of the subject properties.
25. Mr. Colbert stated he would oppose the request if a two story building was constructed, but would support the request if the building was limited to a single story.
26. Transportation reported that it had No Objection to the Application.
27. No one appeared in opposition to the request.
28. 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).
29. 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).

30. 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).
31. 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).
32. The variance approved is the minimum necessary to avoid extraordinary hardship or practical difficulties as required by Section 14-16-6-6(N)(3)(a)(5).
33. The proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
34. The Applicant has authority to pursue this Application.

DECISION:

APPROVAL of a variance of 0.074 acres to allow a lot larger than the allowable contextual standards.

APPEAL:

If you wish to appeal this decision, you must do so by August 15, 2019 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.



Stan Harada, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
Kenneth Cooper, 850 South East Cir NW, 87104