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

Christopher Perea (Agent, Cartesian Surveys) requests a variance of 10 feet to the required side yard setback for Lot 5, Ute Addn, located at 3534 Ute Dr NW, zoned R-1D [Section 14-16-5-1(C)(1)]

Special Exception No:..... **VA-2021-00226**
Project No: ..... **Project#2021-005574**
Hearing Date: 07-20-21
Closing of Public Record: 07-20-21
Date of Decision: 08-04-21

On the 20th day of July, 2021, Cartesian Surveys, agent for property owner Christopher Perea ("Applicant") appeared before the Zoning Hearing Examiner ("ZHE") requesting a variance of 10 feet to the required side yard setback ("Application") upon the real property located at 3534 Ute Dr NW ("Subject Property"). Below are the ZHE's finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 10 feet to the required side yard setback.
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 providing a sound justification for the requested decision, based on substantial evidence, pursuant to IDO Section 14-16-6-4(E)(3).
4. 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).
5. Applicant appeared and gave evidence in support of the application.

6. All property owners within 100 feet of the subject property and the affected neighborhood association were notified. Applicant received the support of
7. The subject property is currently zoned R-1D.
8. 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, Applicant testified and provided written evidence that, the Subject Property has special circumstances because the lots comprising the Subject Property were divided by deed in 1976 and residences constructed based upon the understanding of these lot distributions. However, the lots were not subdivided through the city process by a plat and Applicant has applied to the DRB for a proposed replat (PR-2021-005371) to formalize the lot distributions to match those of the deeds.
9. 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). Specifically, evidence was submitted supporting that, if granted approval, the Applicant intends to construct the project in a manner that is consistent with the IDO and the Development Process Manual (DPM).
10. 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). Specifically, the proposed wall is designed to be in harmony and consistency with what currently exists in the neighborhood, which was supported by photographic evidence and oral testimony. Photographs were submitted showing the neighborhood and site plans and elevations of the proposed improvements.
11. 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). Specifically, Applicant presented evidence that the intent of IDO will still be met in that the subject site will continue the existing use and the proposed variance would merely add to the safety and usability of the site.
12. 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(N)(3)(a)(5). Specifically, Applicant submitted evidence that any smaller variance would be ineffective to provide for the privacy, safety and usability of the site. Thus, the applicant is not requesting more than what is minimally necessary for a variance.
13. City Transportation submitted a report stating no objection.
14. The proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
15. The Applicant has authority to pursue this Application.

DECISION:

APPROVAL WITH CONDITION of a variance of 10 feet to the required side yard setback.

CONDITION:

This approval is conditioned upon the DRB's approval of the platting action filed under PR-2021-005371.

APPEAL:

If you wish to appeal this decision, you must do so by August 19, 2021 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
Cartesian Surveys, cartesianryan@gmail.com

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

Homewise Inc. (Agent, Cartesian Surveys) requests a variance of .073 acres to the contextual lot size for Lot 6, Ute Addn, located at 3536 Ute RD NW, zoned R-1D [Section 14-16-5-1(C)(2)]

Special Exception No:..... **VA-2021-00227**
Project No: ..... **Project#2021-005576**
Hearing Date: 07-20-21
Closing of Public Record: 07-20-21
Date of Decision: 08-04-21

On the 20th day of July, 2021, Cartesian Surveys, agent for property owner Homewise Inc. ("Applicant") appeared before the Zoning Hearing Examiner ("ZHE") requesting a variance of .073 acres to the contextual lot size ("Application") upon the real property located at 3536 Ute Dr NW ("Subject Property"). Below are the ZHE's finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of .073 acres to the contextual lot size.
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 providing a sound justification for the requested decision, based on substantial evidence, pursuant to IDO Section 14-16-6-4(E)(3).
4. 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).
5. Applicant appeared and gave evidence in support of the application.

6. All property owners within 100 feet of the subject property and the affected neighborhood association were notified. Applicant received the support of
7. The subject property is currently zoned R-1D.
8. 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, Applicant testified and provided written evidence that, the Subject Property has special circumstances because the lots comprising the Subject Property were divided by deed in 1976 and residences constructed based upon the understanding of these lot distributions. However, the lots were not subdivided through the city process by a plat and Applicant has applied to the DRB for a proposed replat (PR-2021-005371) to formalize the lot distributions to match those of the deeds.
9. 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). Specifically, evidence was submitted supporting that, if granted approval, the Applicant intends to construct the project in a manner that is consistent with the IDO and the Development Process Manual (DPM).
10. 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). Specifically, the proposed wall is designed to be in harmony and consistency with what currently exists in the neighborhood, which was supported by photographic evidence and oral testimony. Photographs were submitted showing the neighborhood and site plans and elevations of the proposed improvements.
11. 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). Specifically, Applicant presented evidence that the intent of IDO will still be met in that the subject site will continue the existing use and the proposed variance would merely add to the safety and usability of the site.
12. 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(N)(3)(a)(5). Specifically, Applicant submitted evidence that any smaller variance would be ineffective to provide for the privacy, safety and usability of the site. Thus, the applicant is not requesting more than what is minimally necessary for a variance.
13. City Transportation submitted a report stating no objection.
14. The proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
15. The Applicant has authority to pursue this Application.

DECISION:

APPROVAL WITH CONDITION of a variance of .073 acres to the contextual lot size.

CONDITION:

This approval is conditioned upon the DRB's approval of the platting action filed under PR-2021-005371.

APPEAL:

If you wish to appeal this decision, you must do so by August 19, 2021 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
Cartesian Surveys, cartesianryan@gmail.com

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

Homewise Inc. (Agent, Cartesian Surveys) requests a variance of 15 feet to the required 15 feet rear yard setback for Lot 6, Ute Addn, located at 3536 Ute RD NW, zoned R-1D [Section 14-16-5-1(C)(1)]

Special Exception No:..... **VA-2021-00228**
Project No: ..... **Project#2021-005576**
Hearing Date: 07-20-21
Closing of Public Record: 07-20-21
Date of Decision: 08-04-21

On the 20th day of July, 2021, Cartesian Surveys, agent for property owner Homewise Inc. ("Applicant") appeared before the Zoning Hearing Examiner ("ZHE") requesting a variance of 15 feet to the required 15 feet rear yard setback ("Application") upon the real property located at 3536 Ute Dr NW ("Subject Property"). Below are the ZHE's finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 15 feet to the required 15 feet rear yard setback.
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 providing a sound justification for the requested decision, based on substantial evidence, pursuant to IDO Section 14-16-6-4(E)(3).
4. 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).
5. Applicant appeared and gave evidence in support of the application.

6. All property owners within 100 feet of the subject property and the affected neighborhood association were notified. Applicant received the support of
7. The subject property is currently zoned R-1D.
8. 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, Applicant testified and provided written evidence that, the Subject Property has special circumstances because the lots comprising the Subject Property were divided by deed in 1976 and residences constructed based upon the understanding of these lot distributions. However, the lots were not subdivided through the city process by a plat and Applicant has applied to the DRB for a proposed replat (PR-2021-005371) to formalize the lot distributions to match those of the deeds.
9. 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). Specifically, evidence was submitted supporting that, if granted approval, the Applicant intends to construct the project in a manner that is consistent with the IDO and the Development Process Manual (DPM).
10. 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). Specifically, the proposed wall is designed to be in harmony and consistency with what currently exists in the neighborhood, which was supported by photographic evidence and oral testimony. Photographs were submitted showing the neighborhood and site plans and elevations of the proposed improvements.
11. 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). Specifically, Applicant presented evidence that the intent of IDO will still be met in that the subject site will continue the existing use and the proposed variance would merely add to the safety and usability of the site.
12. 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(N)(3)(a)(5). Specifically, Applicant submitted evidence that any smaller variance would be ineffective to provide for the privacy, safety and usability of the site. Thus, the applicant is not requesting more than what is minimally necessary for a variance.
13. City Transportation submitted a report stating no objection.
14. The proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
15. The Applicant has authority to pursue this Application.

DECISION:

APPROVAL WITH CONDITION of a variance of 15 feet to the required 15 feet rear yard setback.

CONDITION:

This approval is conditioned upon the DRB's approval of the platting action filed under PR-2021-005371.

APPEAL:

If you wish to appeal this decision, you must do so by August 19, 2021 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
Cartesian Surveys, cartesianryan@gmail.com

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

Homewise Inc. (Agent, Cartesian Surveys) requests a variance of 10 feet to the required 10 feet side yard setback for Lot 6, Ute Addn, located at 3536 Ute RD NW, zoned R-1 [Section 14-16-5-1(C)(1)]

Special Exception No:..... **VA-2021-00229**
Project No: ..... **Project#2021-005576**
Hearing Date: 07-20-21
Closing of Public Record: 07-20-21
Date of Decision: 08-04-21

On the 20th day of July, 2021, Cartesian Surveys, agent for property owner Homewise Inc. ("Applicant") appeared before the Zoning Hearing Examiner ("ZHE") requesting a variance of 10 feet to the required 10 feet side yard setback ("Application") upon the real property located at 3536 Ute Dr NW ("Subject Property"). Below are the ZHE's finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 10 feet to the required 10 feet side yard setback.
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 providing a sound justification for the requested decision, based on substantial evidence, pursuant to IDO Section 14-16-6-4(E)(3).
4. 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).
5. Applicant appeared and gave evidence in support of the application.

6. All property owners within 100 feet of the subject property and the affected neighborhood association were notified. Applicant received the support of
7. The subject property is currently zoned R-1D.
8. 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, Applicant testified and provided written evidence that, the Subject Property has special circumstances because the lots comprising the Subject Property were divided by deed in 1976 and residences constructed based upon the understanding of these lot distributions. However, the lots were not subdivided through the city process by a plat and Applicant has applied to the DRB for a proposed replat (PR-2021-005371) to formalize the lot distributions to match those of the deeds.
9. 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). Specifically, evidence was submitted supporting that, if granted approval, the Applicant intends to construct the project in a manner that is consistent with the IDO and the Development Process Manual (DPM).
10. 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). Specifically, the proposed wall is designed to be in harmony and consistency with what currently exists in the neighborhood, which was supported by photographic evidence and oral testimony. Photographs were submitted showing the neighborhood and site plans and elevations of the proposed improvements.
11. 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). Specifically, Applicant presented evidence that the intent of IDO will still be met in that the subject site will continue the existing use and the proposed variance would merely add to the safety and usability of the site.
12. 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(N)(3)(a)(5). Specifically, Applicant submitted evidence that any smaller variance would be ineffective to provide for the privacy, safety and usability of the site. Thus, the applicant is not requesting more than what is minimally necessary for a variance.
13. City Transportation submitted a report stating no objection.
14. The proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
15. The Applicant has authority to pursue this Application.

DECISION:

APPROVAL WITH CONDITION of a variance of 10 feet to the required 10 feet side yard setback.

CONDITIONS:

This approval is conditioned upon the DRB's approval of the platting action filed under PR-2021-005371.

APPEAL:

If you wish to appeal this decision, you must do so by August 19, 2021 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
Cartesian Surveys, cartesianryan@gmail.com