

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

HOLLY FLEMING request(s) a special exception to Section 14-16-2-5(D); a VARIANCE of 900 sq feet to the minimum lot size of 10,890 sq feet for a proposed lot for all or a portion of Lot(s) 3, VISTA FASIAN zoned RA-2, located on 908 VISTA FAISAN TRAIL NW (F-14)

Special Exception No:..... **12ZHE-80212**
Project No:..... **Project# 1009347**
Hearing Date: 08-21-12
Closing of Public Record: 08-21-12
Date of Decision: 09-06-12

On August 21 2012, Holly Flemming appeared in front of Interim Zoning Hearing Examiner, Stanley D. Harada requesting a variance of 900 Square feet to the minimum lot size of 10,890 square feet at 908 Vista Faisan Tr NW.

SUMMARY:

1. Ms. Flemming testified that she is requesting a variance of 900 square feet for Lot # 3.
2. Ms. Flemming testified that she has ownership interest in lot 4 of the Vista Faisan Subdivision. Ms. Flemming submitted a sketch plat for lots 3 & 4, with the proposed area of lot line change.
3. Ms Flemming testified that the proposed area re-platting comprises approximately 755 square feet. The actual request is asking for 900 square feet, just to be sure of the square footage coverage.
4. Ms. Flemming testified that the property is irregularly shaped lot that is very narrow as well.
5. Ms. Flemming testified the house that was built sets at an angle due to the odd shape of the lot.
6. Ms Flemming testified that lot 3 and 4 meet at a point in the back. Also, there is a Middle Rio Grande Conservancy District easement that goes through the property that eliminates approximately 1,000 square feet from the lot.
7. Ms Flemming testified that there is no back yard on lot 4, and if the variance is approved would make a home on lot 4 more attractive. The increased back yard would be more appealing as well.
8. Ms. Flemming has owned lot 4 since June of this year.
9. Ms. Flemming testified that the request would enhance the Community, and the re-plat would not even be seen from the street.
10. Keith Ritchey testified in support of the request.
11. Mr. Ritchey testified that he was the builder for Ms. Flemming, who also owns lot 11 in the Vista Faisan Subdivision.
12. Mr. Ritchey testified that the re-plat of lot 3 would improve the lot greatly.
13. There is a letter of opposition in the file (Mark S. McConnell, President of the Vista Faisan Homeowners Association).

14. Mr. McConnell testified that the Architectural Control Committee (ACC) for Vista Faisan consists of 3 board members, and it was voted to reject the request.
15. Ronald Wayne Kaehr, who owns lot 7 in the Vista Faisan subdivision, spoke in opposition of the request.
16. Mr. Kaehr is on the ACC, testified that the dwelling was approved as a spec home, and the house was sold as is.
17. Mr. Kaehr testified that the new owners knew of the limited open space when purchased, and knew the restrictions when purchased.
18. Ann Sei, who lives at 909 Vista Faisan is also on the ACC spoke in opposition of the request.
19. Ms. Sei testified that all of the properties in the subdivision are unique and have their own set of open space challenges.
20. Ms. Sei testified that this variance request will create a substandard lot size for the subdivision. The minimum lot size for a property that is zoned RA-2 is 10890 square feet.
21. Ms. Sei testified that this request if approved would set an unjust precedence for the subdivision. Ms. Sei does not feel that this request does not create a hardship for the applicant.
22. Ms. Sei testified that there is also an issue with the wall that was constructed on the property. The agreement between the owners and the ACC was to complete the wall. This has not been done to this day.
23. Ms. Flemming testified that she approached the Vista Faisan Architectural Control Committee and they based the opposition on inaccurate information.
24. Ms. Flemming testified in rebuttal that the request all of the requirements of the Vista Faisan subdivision, and she has the right to apply for a variance.
25. Ms. Flemming testified that the HOA has not provided an argument on how the property is negative.
26. Ms. Flemming testified that the actual square footage request is 755, but was given advice from the zoning counter to apply for 900 square feet to cover area of request.
27. Ms. Flemming testified that there is plenty of room on lot 3 to build a significant house on the lot.

FINDINGS: Mr. Flemming has not met the burden of showing the property being exceptional. Although the lot is irregular in shape, the Hearing Examiner finds that the majorities of the lots in the Vista Faisan Subdivision are irregular in shape and have similar open space limitations. The Hearing Examiner finds that by approving this variance request would create an unjust precedence for the subdivision, and therefore, finds the subject property is not exceptional.

DECISION: Denied.

If you wish to appeal this decision, you may do so by 5:00 p.m., on September 21, 2012 in the manner described below:

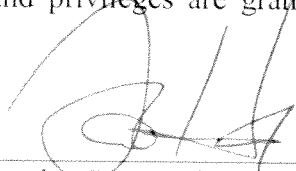
Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, Planning Application Counter located on the west side of the lobby. **Please present this letter of notification when filing an appeal.** When an application is withdrawn, the fee shall not be refunded.

An appeal shall be heard by the Board of Appeals within 45 days of the appeal period and concluded within 75 days of the appeal period. The Planning Division shall give written notice of an appeal, together with a notice of the date, time and place of the hearing to the applicant, a representative of the opponents, if any are known, and the appellant.

Please note that pursuant to Section 14. 16. 4. 4. (B). of the City of Albuquerque Comprehensive Zoning Code, you must demonstrate that you have legal standing to file an appeal as defined.

You will receive notice if any other person files an appeal. If there is no appeal, you can receive building permits any time after the appeal deadline quoted above, provided all conditions imposed at the time of approval have been met. However, the Zoning Hearing Examiner may allow issuance of building permits if the public hearing produces no objection of any kind to the approval of an application. To receive this approval, the applicant agrees in writing to return the building permit or occupation tax number.

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.



Stanley D. Harada, Esq.
Interim Zoning Hearing Examiner

cc: Zoning Enforcement
Holly Flemming, 912 Vista Faisan Trail NW 87107
Mark S. McConnell, 904 Vista Faisan Trail NW 87107
Ann Sei, 909 Vista Faisan Trail NW 87107
Ronald Wayne Kaehr, 901 Vista Faisan Trail NW 87107
ZHE File