MEETING DATE: February 28, 2019

REQUEST:
Variance to allow a 2’6” side yard setback, where 5’ is required for a 100 sq. ft. addition to a dwelling.

CASE #: V19-001

PROPERTY OWNER: Nicolle Stokes
APPLICANT/AGENT: Jacob Ledesma
LOCATION: 3825 Stoney Brook Circle
Las Cruces, NM

PROPERTY SIZE: 0.33-acres
PARCEL ID NO.: R0324552
RECOMMENDATION: Denial
CASE MANAGER: Albert Casillas, Planner

SUMMARY: Submitted by Nicolle Stokes, a request for a Variance to the side yard setback standards on a residential property for an addition. The applicant is proposing a 2’6” side setback, where 5’ is required in order to build a 100 sq. ft. addition to an existing dwelling within the D2-L Zone. The 0.33-acre parcel is addressed at 3825 Stoney Brook Circle in Las Cruces, NM and is identified as Lot 13, Block A of the Rios Encantados Phase IV subdivision, recorded in the Doña Ana County Clerk’s Office on September 3, 2004, in Book 20, Pages 779-780. The subject parcel can further be identified as Parcel #R0324552.

REPORT CONTENTS: (1) Case Analysis and Staff Recommendation (2) GIS Information & Maps (3) Application and Supporting Documents (4) Conceptual Plan
SURROUNDING ZONING AND LAND USE

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Existing Conditions and Zoning:

The 0.33-acre subject parcel is residentially zoned as D2-L (Medium Density Residential-Limited) and is addressed at 3825 Stoney Brook Circle in Las Cruces, NM. The existing 1,769 sq. ft. site-built home was constructed in 2005. The parcel abuts D2-L zoning on the north, south and west, and City of Las Cruces Limits on the east. Access to the property is Stoney Brook Circle, a paved County maintained ROW.

The Request:

The applicant is requesting a Variance to the side setback requirements on a residential property and is proposing a 2’6” setback, where 5’ is required in order to permit a 100 sq. ft. addition to the existing dwelling within the D2-L Zone that has already been built. A site inspection revealed an encroachment from the addition.

The parcel is identified as Lot 13, Block A of the Rios Encantados Phase IV subdivision recorded on 9/3/2004, in Book 20, Pages 779-780 in the Doña Ana County Clerk’s Office. It can be further identified by Parcel # R0324552.

BACKGROUND

The following is a Chronology of Events submitted by Building Services:

1. On October 22, 2018, building permit #43890 was issued to Jacob Ledesma and Vista del Sol Construction for a remodel that would enclose a patio and convert it into a family room. Construction drawing depicted the enclosure of the patio and an “ancillary” addition accessed via an existing bedroom. The site plan submitted for the remodel failed to show the location of the “ancillary” addition.

2. On November 15, 2018, Sean Vick, DAC Building Inspector, arrived to the property to conduct a framing inspection. He noticed that the “ancillary” addition in question had already been constructed and had been stuccoed. Sean Vick advised the contractor that he could continue with the remodel of the patio, but construction of the addition had to stop because it appeared it was in violation of side yard setbacks.
3. Jacob Ledesma presented a site plan to staff where it was discovered that the addition was encroaching within the 5’ setback. The Variance application was submitted in late January 2019.

APPLICABLE PLANS, POLICIES, AND CRITERIA FOR APPROVAL

Chapter 350. Unified Development Code
Ordinance No. 287-2016

§350-104.C.2 Duties of the Planning and Zoning Commission: Receive, hear and make final determinations on applications for variances and special use permits as prescribed by, and subject to, the procedures established herein.

§350-202.B General Notice Requirements

§350-207 Variances

§350-207.A Public Hearing and Approval

§350-207.B Findings

The P&Z and the BOCC, if the matter is appealed, may grant, grant with conditions, or deny a variance after making specific findings on whether the applicant has adequately demonstrated:

a. The variance will not constitute a grant of special privilege inconsistent with the limitations on other properties in the area of notice;

b. The variance will not be detrimental to the public health, safety, or welfare, or be materially injurious to properties or improvements in the area of notice;

c. There is a physical hardship resulting from the size or shape of the parcel; or from existing structures on the parcel; or from topographic or physical conditions on the site or in the area of notice and the hardship is not self-imposed; and;

d. The variance upholds the purpose and intent of this Chapter, public safety and welfare are secured, and substantial justice is done.

§350-210.A Building Permits

A building permit shall be required for all construction within the County as specified in the latest Building Code adopted by the County. All building permit applications submitted to the Building Services Division (BSD) shall be reviewed in accordance with the currently adopted Building Code in effect and subsequent amendments thereto. Additionally, all building permit applications shall be reviewed for compliance with the requirements of this chapter, an approved site plan, delinquent taxes, and all other applicable state and local laws.

§350-502 Table 5.5 Site Standards for D2-L Zone
NOTICE / NOTIFICATION

- Thirty (30) letters of notification were mailed to the property owners within the area of notice on February 4, 2019.
- Legal Ad was placed in the Las Cruces Sun-News on February 3, 2019.
- Signs posted on the property in a timely manner.
- Agenda posted on the DAC Web site.
- No letters in opposition or in favor received.

AGENCY COMMENTS

DAC Engineering: 1. No Comments.

DAC Flood Commission: General Comments: 1. The Flood Commission received this Variance request on January 30, 2019. 2. Pursuant to FIRM No. 35013C1094G, the subject property is not currently located within a FEMA Special Flood Hazard Area and is located in FEMA “Other Areas”, Zone “X”, “areas determined to be outside 500-year floodplain.” 3. Due to increases in impervious area, the property owner will be required to retain increase in storm water runoff on site, in the designated drainage easement on the rear property boundary. 4. The roof pitch of the proposed addition will have to be directed in a way that drains runoff to the East or West sides of the property, and does not drain any runoff to the South, onto adjacent property.

DAC Fire Marshal: Variance approved only, any future structures will be required to meet all fire code requirements.

DAC Building Services: 1. Building Permit will be required prior to construction and shall be Tripled Fee. 2. The property will be made available for all required inspections. 3. The applicant shall obtain a final Certificate of Occupancy.

DAC Rural Addressing Coordinator: No comments.

DAC Zoning Codes: No open zoning violations at this time.

DAC Codes: No codes violations.

Advanced Planning: Variance does not affect UDC 5.7 landscaping, buffering & fencing requirements.

NMED: No comments or concerns with the project as described.

City of Las Cruces: Staff recommends denial due to the fact that the addition will encroach on the 5’ platted drainage easement. Per Plat Note #10: “All yard walls shall not impede storm water flow from street to drainage easement at rear of yard.” It is staff opinion that structures shall not be located within the drainage easement.
STAFF ANALYSIS

The Planning and Zoning Commission being duly appointed shall receive, hear and make final determination on this Variance request. The decision of the Planning and Zoning Commission can be appealed by an aggrieved party or person to the Board of County Commissioners.

The 0.33-acre subject parcel is residentially zoned as D2-L (Medium Density Residential) and is addressed at 3825 Stoney Brook Circle in Las Cruces, NM. The existing 1,769 sq. ft. site-built home was constructed in 2005. The parcel abuts D2-L zoning on the north, south and west, and City of Las Cruces Limits on the east. Access to the property is Stoney Brook Circle, a paved County maintained ROW.

The applicant is requesting a Variance to the side yard setback requirements on a residential property and is proposing a 2’6”, where 5’ is required in order to permit a 100 sq. ft. addition to the existing dwelling within the D2-L Zone. A site inspection revealed an encroachment from the addition which was originally a shed that had been stuccoed and attached to the house.

On October 22, 2018, building permit #43890 was issued to Jacob Ledesma and Vista del Sol Construction for a remodel that would enclose a patio and convert it into a family room. Construction drawing depicted the enclosure of the patio and an “ancillary” addition accessed via an existing bedroom. The site plan submitted for the remodel failed to show the location of the “ancillary” addition.

On November 15, 2018, Sean Vick, DAC Building Inspector, conducted a framing inspection. He noticed that the “ancillary” addition in question had already been constructed and had been stuccoed. Sean Vick advised the contractor that he could continue with the remodel of the patio, but construction of the addition had to stop because it appeared it was violation of setbacks.

Jacob Ledesma presented a site plan to staff where it was discovered that the addition was encroaching within the 5’ setback. The Variance application was submitted in late January 2019.

The applicant contends that the Variance will not be detrimental because the addition will be for the property owners mother who suffers from dementia and is in the last years of her life. In granting the Variance it will bring a certain measure of comfort to their loved one.

§350-207.B Findings: (Staff response in bold) Applicants responses (Pg. 09)

a. The variance will not constitute a grant of special privilege inconsistent with the limitations on other properties in the area of notice. The 100 sq. ft. addition was started without an appropriate building permit. No other Variances have been approved in the vicinity. Setbacks could have been met if applicant had applied for a Building Permit. This is a self-imposed hardship.

b. The variance will not be detrimental to the public health, safety, or welfare, or be materially injurious to properties or improvements in the area of notice. The proposed setback does not meet the setback requirements of D2-L under the UDC; therefore, the proposed setback can be detrimental to the public health, safety and welfare or be materially injurious to property improvements in the area as the setback exceeds the limitations established in the UDC.

c. There is a physical hardship resulting from the size or shape of the parcel; or from existing structures on the parcel; or from topographic or physical conditions on the site or in the area of notice and the hardship is not self-imposed. An inspection of the property does not reveal any
physical hardships based on the existing conditions of the site. This is a self-imposed hardship as the applicant started construction without any building permits, which could have been corrected if the applicant complied with the stop order.

d. The variance upholds the purpose and intent of this Chapter, public safety and welfare are secured, and substantial justice is done. **Granting of the Variance will not uphold the spirit and intent of the UDC §350-103 Intent.** “Create orderly harmonious, economically sound development in order to promote the health, safety and general welfare of the residents of the County.” Deviation from the regulation such as allowing a 2’6” side set back in order to pursue a Variance application where a 5’ side setback is required does not meet the standards and undermines the spirit and intent of the UDC.

**STAFF FINDINGS:**

1. The request of this application is consistent with the requirements of §350-207 Variances of the Doña Ana County Unified Development Code.

2. The property is outside of any incorporated municipal zoning authority and is within Doña Ana County, therefore the Planning & Zoning Commission has jurisdiction to hear this case.

3. Pursuant to §350-104.C.2, the Doña Ana County Planning & Zoning Commission shall receive, hear and make final determinations on applications for variances and special use permits as prescribed by, and subject to, the procedures established herein.

4. Notice requirements have been met as prescribed in §350-202.B Public Hearing and Approval.

5. The Variance request does not meet §350-207.B Findings of the Doña Ana County Code Chapter 350 Unified Development Code (Ordinance No. 287-2016, as amended):

   a) The Variance will constitute a grant of special privilege inconsistent with the limitations on other properties in the area of notice. The 100 sq. ft. addition was started without an appropriate building permit. No other Variances have been approved in the vicinity. Setbacks could have been met if applicant had applied for a Building Permit. This is a self-imposed hardship.

   b) The Variance will be detrimental to the public health, safety, or welfare, or be materially injurious to properties or improvements in the area of notice. The proposed setback does not meet the setback requirements of D2-L under the UDC; therefore, the proposed setback can be detrimental to the public health, safety and welfare or be materially injurious to property improvements in the area as the setback exceeds the limitations established in the UDC.

   c) There is not a physical hardship resulting from the size or shape of the parcel; or from existing structures on the parcel; or from topographic or physical conditions on the site or in the area of notice and the hardship is self-imposed. An inspection of the property does not reveal any physical hardships based on the existing conditions of the site. This is a self-imposed hardship as the applicant started construction without any building permits, which could have been corrected if the applicant complied with the stop order.
d) The Variance does not uphold the purpose and intent of this Chapter, public safety and welfare are secured, and substantial justice is done. Granting of the Variance will not uphold the spirit and intent of the UDC §350-103 Intent. “Create orderly harmonious, economically sound development in order to promote the health, safety and general welfare of the residents of the County.” Deviation from the regulation such as allowing a 2’6” side setback in order to pursue a Variance application where a 5’ side setback is required does not meet the standards and undermines the spirit and intent of the UDC.

**STAFF RECOMMENDATION:**

Based on the request meeting the applicable sections of the Unified Development Code, Staff recommends **Denial** of Case #V19-001, however, if the Planning and Zoning Commission grants approval of the Variance, the following conditions shall apply:

1. **The applicant shall obtain a Building Permit for all structures that are not permitted and shall be Tripled Fee.**
2. **The property will be made available for all required inspections.**
3. **The applicant shall obtain a final Certificate of Occupancy.**
APPLICANT’S NARRATIVE

Jacob Ledesma, Owner
Vista Del Sol Construction
Consulting and Construction Services
Est. 1994
NM GB-98 #52798
2904 Valle Vista
Las Cruces, NM 88011
(575) 993-3726
jacob@vistadesol.net

Doña Ana County
Community Development Department
845 N. Motel Blvd.
Las Cruces, NM 88007
Phone: (575) 647-7350
www.donaanacounty.org

VARIANCE REQUEST

To whom it may concern:

This letter is a request for variance to allow the inclusion of an approximately 10’ x 10’ existing shed as part of our permitted project, permit #43890. This request comes as a result of the existing shed encroaching on the required side setbacks on the south side of the property (please see attached site plan). The proposed use of the shed is a room for the homeowners mother, who suffers from dementia and is in the last years of her life. This room will allow their loved one a place of solitude to relax. We thank you in advance for reviewing this request and, our hope is that your flexibility in granting the variance will allow this family to bring a certain measure of comfort to their loved one.

Respectfully submitted,

Jacob Ledesma
SITE PLAN (REMODEL PERMIT)
LOT 13, DEPICTING 5' DRAINAGE EASEMENT
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