



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

DR. SUZANNE LOPEZ requests a special exception to Section 14-16-3-3(B)(2)(e): a VARIANCE of 3ft 7in to the required 10ft separation between a dwelling and an accessory structure for all or a portion of Lot 1, Block 15, Academy Estates Unit 4 zoned R-1, located on 9100 LUNA DEL ORO RD NE (F-20)

Special Exception No: .....**17ZHE-80272**  
Project No: .....**Project# 1011442**  
Hearing Date: .....02-20-18  
Closing of Public Record: .....02-20-18  
Date of Decision: .....03-07-18

On the 20th day of February, 2018, DR. SUZANNE LOPEZ (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 3ft 7in to the required 10ft separation between a dwelling and an accessory structure (“Application”) upon the real property located at 9100 LUNA DEL ORO RD NE (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 3ft 7in to the required 10ft separation between a dwelling and an accessory structure.
2. The City of Albuquerque Zoning Code of Ordinances Section 14-16-4-2 (C)(2) (Special Exceptions – Variance) reads: “*A variance application shall be approved by the Zoning Hearing Examiner, if and only if, the Zoning Hearing Examiner finds all of the following:*
  - (a) *The application is not contrary to the public interest or injurious to the community, or to property or improvements in the vicinity;*
  - (b) *There are special circumstances applicable to the subject property which 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;*
  - (c) *Such special circumstances were not self-imposed and create an unnecessary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the property that need not be endured to achieve the intent and purpose of the Zoning Code (§14-16-1-3) and the applicable zoning district; and*
  - (d) *Substantial justice is done.*”
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 14-16-4-2(C).
4. Applicant states that she was given a 10’x12’ shed and had it placed where she was instructed to do so by the City of Albuquerque.
5. The size of the shed requires that it be placed at least 10 feet from any dwelling or accessory living quarters.

6. Although the original shed appears to meet the separation requirement, Applicant constructed a porch on the shed, the nearest part of which is located 6'5" from the dwelling on the subject property, prompting the variance request.
7. Applicant did address the first criterion, that the application is not contrary to the public interest or injurious, however this point was met but significant contradictory evidence and testimony from other parties.
8. Those parties raised a number of issues associated with the Subject Property and its use that I do not find relevant to the code-required analyses and that would be better raised with Code Enforcement.
9. In the end, however, I do not need to analyze the first criterion because of the failure to meet several others.
10. Specifically, Applicant failed to meet her burden of ensuring evidence in the record that there are code-recognized special circumstances applicable to the subject property or that those circumstances are not self-imposed. Applicant neither addresses these required findings in her application nor submits evidence on which to make the required findings.
11. In the absence of positive findings on these criteria, I cannot approve the request.
12. The ZHE finds that the proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-4-2(B)(4).
13. The ZHE finds that the Applicant has authority to pursue this Application.

#### CONCLUSIONS OF LAW:

The criteria within Section 14-16-4-2(C)(2) of the Albuquerque Zoning Code have not been satisfied.

#### DECISION:

DENIAL of a variance of 3ft 7in to the required 10ft separation between a dwelling and an accessory structure

If you wish to appeal this decision, you must do so by March 22, 2018, in the manner described below. A non-refundable filing fee will be calculated at the Planning Department's Land Development Coordination counter and is required at the time the Appeal is filed.

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.



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Christopher L. Graeser, Esq.  
Zoning Hearing Examiner

cc: Zoning Enforcement  
ZHE File  
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