



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

Judy Romero requests a variance of 5 ft to the 10 ft west side yard setback for Lot 256B1-B1, located at 2719 Floral RD NW, zoned R-A [Section 14-16-5-1]

Special Exception No:..... **VA-2018-00215**  
Project No: ..... **Project# 2018-001866**  
Hearing Date: ..... 01-15-19  
Closing of Public Record: ..... 01-15-19  
Date of Decision: ..... 01-30-19

On the 15th day of January, 2019, Yolanda Montoya, agent for property owner Judy Romero (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 5 ft to the 10 ft west side yard setback (“Application”) upon the real property located at 2719 Floral RD NW (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 5 ft to the 10 ft west 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 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. Yolanda Montoya, agent for property owner appeared and gave evidence in support of the application.
5. All property owners within 100 feet of the subject property and the affected neighborhood association were notified.

6. Los Duranes Neighborhood Association is the affected neighborhood association.
7. Nothing was received from the NA.
8. The subject property is currently zoned R-A.
9. The subject property is a single lot.
10. Owner is presently on active duty with the United States Public Health Service, assigned to Gallup.
11. She purchased the subject lot in 2014 with the intent to build her primary residence for her retirement.
12. It was the last undeveloped lot in an old mature neighborhood.
13. Owner intends the property as a primary residence for her and her daughter upon her pending retirement.
14. The minimum side yard set-back requirements in this area were 5 feet at the time owner purchased the lot.
15. The proposed building would be consistent with the existing architectural character and existing set-backs of adjacent properties and the surrounding community.
16. The Application is for new construction and would enhance the property values of the surrounding community.
17. The side yard set-backs requirements were changed to a 5 foot minimum when the City of Albuquerque Integrated Development Ordinance (IDO) became effective May 2018.
18. The set-back requirements changed as a result of governmental action.
19. Owner did not receive compensation when this requirement changed.
20. This area is a mature development with many of the existing houses constructed with the previous side-yard set-back requirements.
21. Maintaining the 10 feet side yard setbacks would diminish the available living area in the new construction, and impose a financial hardship on owner.
22. Owner would be required to abandon this project since it would not be financially possible if the Application is not approved.
23. Ann Cisneros-Snyder, 2721 Floral Rd NW, appeared and gave evidence in opposition to the Application.
24. She is the property owner adjacent and to the west of the subject property.
25. She feels that granting the variance would diminish her privacy
26. She is afraid her property values might suffer if the variance is granted.
27. She feels a little house does not look right.
28. She submitted letters (4) from other persons in the neighborhood, all in opposition to the Application.
29. These letters concur in feeling their property values would be diminished by allowing a little house out of character with the neighborhood.
30. They also raise a fire safety issue stating it would be dangerous for fire fighters if the side yard setbacks were too small for safety.
31. Doris Greer, 2440 Floral Rd NW, appeared and gave evidence in opposition to the Application.
32. She agreed with comments made by Ms. Cisneros-Snyder and had nothing further to add.
33. Yolanda Montoya, agent, responding to the points made in opposition to the Application.
34. All of the properties adjacent and to the north of the subject property have primary residences separated by the previous 5 feet minimum side yard setback.

35. The proposed project would be consistent with the side yard setbacks in the surrounding community.
36. The approval of the Application would allow the new construction to not be a little house.
37. The new construction would be architecturally consistent with other houses in the surrounding community.
38. Transportation reported No Objection to the Application.
39. 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).
40. 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).
41. 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).
42. 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).
43. 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).
44. The proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
45. The Applicant has authority to pursue this Application.

DECISION:

APPROVAL of a variance of 5 ft to the 10 ft west side yard setback.

APPEAL

If you wish to appeal this decision, you must do so by February 14, 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.



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Stan Harada, Esq.  
Zoning Hearing Examiner

cc: Zoning Enforcement  
ZHE File  
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Yolanda Montoya, 8724 Alameda Park Dr NE, 87113  
Anna Marie Cisneros, 2721 Floral Rd NW, 87104