



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

Daniel Powell requests a variance of 15 ft to the required 25 ft rear yard setback for Lot 208B2, MRGCD Map 31, located at 1320 Avenida Cristo Rey NW, zoned R-A [Section 14-16-5-1(C)]

Special Exception No:..... **VA-2019-00180**  
Project No: ..... **Project#2019-002458**  
Hearing Date: ..... 07-16-19  
Closing of Public Record: ..... 07-16-19  
Date of Decision: ..... 07-31-19

On the 16th day of July, 2019, property owner Daniel Powell (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 15 ft to the required 25 ft rear yard setback (“Application”) upon the real property located at 1320 Avenida Cristo Rey NW (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 15 ft to the required 25 ft 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 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. The variance requested is from Section 14-16-5-1: *Development Standards; Dimensional Standards; Table 5-1-1: Residential Zone District Dimensional Standards.*, which requires a rear yard minimum setback of 25 feet for an R-A zone.
5. Daniel Powell, property owner appeared and gave evidence in support of the application.

6. The address of the subject property is 1320 Avenida Cristo Rey NW.
7. All property owners within 100 feet of the subject property and the affected neighborhood association were notified by an e-mail dated April 30, 2019.
8. North Valley Coalition of Neighborhood Associations and South Guadalupe Trail Neighborhood Association are the affected neighborhood associations.
9. Applicant received a call from Peggy @ the North Valley Coalition, stating the association had no opposition to the Application.
10. No other response or request for meeting has been submitted.
11. Applicant had a conversation with Ms. Molina, the adjacent property owner to the south, who voiced no opposition to the request.
12. Applicant relayed another conversation with a neighbor in the North Compound Neighborhood, who also voiced no opposition to the Application.
13. The subject property is currently zoned R-A.
14. The subject property is currently vacant.
15. The proposed project is construction of a single family, two-story residence, approximately 2,200 square feet in area.
16. The implementation of the IDO in May 2018, changed the Zone District of the subject property to R-A.
17. The rear yard setback for an R-1 Zone District is 10 feet.
18. The adjacent neighborhood to the north is in zone district R-1A, and the adjacent neighborhood to the east is zone district R-1C.
19. The adjacent development neighborhood to the north (North Compound) was developed with rear yard setbacks of 10 feet.
20. The minimum lot size for the R-A zone district is 10,890 square feet.
21. The subject property barely fits into this minimum size.
22. If the area of the granted private access easement is removed from the lot size, it would result in a lot which would more appropriately fit into an R-1D Zone District.
23. The subject property is an unusually shaped property, wedge shaped and longer and narrow in overall shape.
24. The north and narrower end of the subject property is 73.5 feet wide.
25. There is a 10-foot wide private access easement along the north end of the subject property, which allows access to the adjacent property located to the east.
26. Without the variance requested, Applicant would be required to provide a front yard setback of 20 feet and a rear yard setback of 25 feet, yielding him a house with a width limit of 28.5 feet on the narrow end of the subject property.
27. This would create extreme economic hardship and practical difficulties in designing a useable residence with this limitation.
28. Transportation reported no opposition to the Application.
29. An e-mail from Ken Balizar, dated May 11, 2019, stating support for the request was submitted in support of the Application.
30. An e-mail from Steve Finch, dated May 15, 2019, stating objection to the request, was submitted in opposition to the Application.
31. Steve Finch, 1330 Avenida Cristo Rey NE, appeared and gave evidence in opposition to the request.
  - a. He is the property owner of adjacent property located to the east of the subject property.

- b. His property borders the rear yard area of the subject property.
  - c. He has invested money in improving his property.
  - d. He has installed electrical service, had a water well put in place, cleaned the property of trash and debris, and the property is currently vacant, with a dilapidated wood “barn” structure.
  - e. He feels the granting of the request will devalue his property, by allowing Applicant to build too close to his property.
  - f. He also feels his taxes will go up.
  - g. He also feels granting the request will increase dangerous flood control issues to the area, by allowing him to build a structure in the low drainage area where excess water pools, would increase the flooding danger.
  - h. He also is worried about access to the adjacent irrigation system caused by allowing Applicant to build in the rear setback area.
  - i. Finally, even though a 10-foot private access is platted on the subject property to grant access to his property, he feels this is not wide enough to allow AFD to access his property in a fire emergency, especially, as a tree present sits in that access easement.
  - j. He submitted a petition signed by 3 neighbors in the area, which oppose the request.
  - k. He also submitted a Zoning map of the area; a Plat of Survey for his property and the subject property, and a feasibility study for his property, 1330 Avenida Cristo Rey, in opposition to the Application.
32. New construction generally brings up values in neighborhoods, which may lead to increased taxes, usually associated with increasing property values.
33. Access to the adjacent property is granted by the 10-foot easement and any restriction of that access caused by a tree on his property, could be easily removed by him.
34. Access to the adjacent property for emergency services, would not generally be though subject property’s rear yard setback area.
35. Access to the irrigation system is not impacted by the request.
36. 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).
37. 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).
38. 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).
39. 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).
40. 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).
41. The proper “Notice of Hearing” signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
42. The Applicant has authority to pursue this Application.

DECISION:

APPROVAL of a variance of 15 ft to the required 25 ft rear yard setback.

APPEAL:

If you wish to appeal this decision, you must do so by August 15, 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.



---

Stan Harada, Esq.  
Zoning Hearing Examiner

cc: Zoning Enforcement  
ZHE File  
Daniel Powell, 1320 Avenida Cristo Rey NW, 87107  
Steve Finch, 1330 Avenida Cristo Rey NW, 87107  
Susan Laugner, 1311 Avenida Cristo Rey NW, 87107