



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

Karla Linden requests a variance of 4 ft to the 5 ft side yard setback for Lot 4, Block 20, Carlisle Del Cero No 2, located at 3812 Delamar Ave NE, zoned R-1C [Section 14-16-5-1(C)(1)]

Special Exception No:..... **VA-2019-00044**  
Project No: ..... **Project# 2019-002062**  
Hearing Date: ..... 03-19-19  
Closing of Public Record: ..... 03-19-19  
Date of Decision: ..... 04-03-19

On the 19th day of March, 2019, property owner Karla Linden (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 4 ft to the 5 ft side yard setback (“Application”) upon the real property located at 3812 Delamar Ave NE (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 4 ft to the 5 ft min 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-(F)(2)
4. Glen Smith of Sandia Sunrooms, agent for Karla Linden, property owner appeared and gave evidence to support the Application.
5. All property owners within 100 feet of the subject property and the affected neighborhood association were notified.

6. Hodgin Neighborhood Association is the affected neighborhood association.
7. The subject property is currently zoned R-1C.
8. The dimensional standards for this zone district are established by Section 14-16-5-1, Table 5-1-1: Residential Zone District Dimensions.
9. The request for a variance from the minimum side yard setback requirements is for a patio cover which is already built.
10. A site plan was submitted in support of the Application.
11. The variance would allow the owner to enjoy the use of the porch she has created in the side yard.
12. The subject side yard is on the east edge of the subject lot.
13. This side yard is 7 foot wide.
14. Because it faces east, the sunlight streaming in renders the area partially unusable during portions of the day.
15. If the porch complies with required setbacks, the porch would only be 3 foot wide, rendering it not usable.
16. The shade structure would allow her to use this area of her property more fully.
17. The shade structure would increase the value of the home.
18. The structure consists of metal support columns with aluminum roofing.
19. It is designed for low maintenance and the color matches the trim of the primary building.
20. The owner has constructed a concrete slab for this porch.
21. The requested would allow owner to more fully use her property.
22. A letter from the Hodgin Neighborhood Association, with no signature, dated January 31, 2019, was submitted in opposition to the request.
23. The primary objection raised was why the structure was constructed by a licensed contractor without first obtaining a permit.
24. The NA will not support a variance request when laws/codes are violated.
25. Cathy Intemann, 3816 Delamar NE, adjacent property owner appeared and gave evidence in opposition to the request.
26. She observed workers completing a metal porch covering in the back yard of the subject property, sometime in late September, 2018.
27. She asked the workers if they had a permit, and received no response.
28. Karla Linden, owner delivered a letter dated October 1, 2018, to her and her husband responding to the questions directed at the Sandia Sunrooms workers, stating that "the permit was pulled prior to the start of the job"
29. This letter was submitted in opposition to the request.
30. Cathy called Code Enforcement, who informed her no permit had been issued for the structure.
31. Code Enforcement took her complaint and after inspection by the Code Enforcement Officer, halted the construction and issued a citation.
32. The structure has already been built and is not 1 foot from the existing common wall, but the support posts are directly against the common wall.
33. Photographs evidencing the existing posts are submitted in opposition to the request.
34. She stated that there was originally only a window on that side of Ms. Linden's house.
35. She installed French doors to replace the window, and then poured the concrete slab porch after the doors were installed.
36. The shade structure was then started.

37. The structure is 35 feet in width and runs the length of the house.
38. It covers the concrete slab poured for the porch.
39. She questions whether the slab was poured with a permit, as it also appears to violate the side yard setback minimum requirement.
40. There is also an existing shaded porch on the south side of the primary residence.
41. David Wiederholt, 3816 Delamar NE, adjacent property owner and husband of Cathy Intemann, appeared and gave evidence in opposition to the request.
42. He would repeat what Cathy stated, but adds additional points.
43. Setbacks are established for many reasons, but fire safety is definitely a primary reason.
44. As Cathy stated, the structure is right next to the common wall and their bedroom is directly on the opposite side of the wall.
45. If the structure were allowed to remain, the area could easily become a fire flash point, with furniture, storage, etc., and the force of the fire could be directed directly towards their house, which is constructed of wood.
46. With no firebreak afforded by the setback area, their home and property could be unreasonably threatened and fire danger aggravated by the existing structure.
47. He and his wife have walked their surrounding neighborhood, and they do not find any similar structures built in side yard setbacks.
48. The owner no longer lives in the subject residence.
49. A renter started living there March 1, 2019.
50. Glen Smith, agent gave rebuttal evidence to issues and objections raised by the neighborhood association and the adjacent property owners.
51. Responding to the question raised as to why an experienced and licensed contractor would build a structure without a permit, he stated that there was some confusion between him and the owner regarding the permit.
52. He admitted he failed to verify that a permit had been pulled, and assumed the owner had obtained the permit.
53. He also admitted that the present structure may be against the common wall, but could not verify how close.
54. He admitted the reasonableness of the concerns raised by Mr. Wiederholt regarding fire possibly being directed by the metal roof.
55. The special circumstance related to the request are self-imposed.
56. Adjacent properties are injured and could be potentially injured in the future by the structure.
57. Applicant has failed to propose reasonable proposals or amendments sufficient to mitigate the existing and future potential injury to adjacent neighbors and the surrounding community.
58. The Variance would be contrary to the public safety, health and welfare of the community.
59. The Variance would cause significant adverse material impacts on surrounding properties.
60. The Variance would materially undermine the intent and purpose of the IDO or applicable zone district.
61. The ZHE finds that the proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
62. The ZHE finds that the Applicant has authority to pursue this Application.

#### CONCLUSIONS OF LAW:

The criteria within Section 14-16-6-6(N)(3)(c) of the Albuquerque Zoning Code are not satisfied.

DECISION:

The variance request of 4 ft to the 5 ft minimum side yard setback is DENIED.

APPEAL

If you wish to appeal this decision, you must do so by April 18, 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  
Karla Linden, 3812 Delamar Ave NE, 87110  
Glenn Smith, 4380-G Alexander Blvd NE, 87107  
Cathy Intemann, David Wiederholt, 3816 Delamar Blvd NE, 87110