



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

GC Gonzales LLC (Agent, Garcia/Kraemer & Associates) request a variance of 20 ft to the minimum required 50 ft neighborhood edge buffer for Lot C1, Paseo Nuevo 2, located at 6425 Holly Ave NE, zoned MX-L [Section 14-16-5-9(F)(1)]

Special Exception No:..... **VA-2019-00459**  
Project No: ..... **Project#2019-003152**  
Hearing Date: ..... 02-18-20  
Closing of Public Record: ..... 02-18-20  
Date of Decision: ..... 03-04-20

On the 18th day of February, 2020, Garcia/Kraemer & Associates, agent for property owner GC Gonzales LLC (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 20 ft to the minimum required 50 ft neighborhood edge buffer (“Application”) upon the real property located at 6425 Holly Ave NE (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 20 ft to the minimum required 50 ft neighborhood edge buffer.
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. 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. The subject property is currently zoned MX-L.
7. Based on evidence submitted by or on behalf of Applicant, 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). Specifically, the lot is exceptional in terms of topography, location and surroundings. The abutting commercially developed property to the west was recently approved under the previous City Zoning Code and was approved with parking areas that are 10 ft from the residentially zoned property to the north, which is much higher in elevation than the subject property. The subject property parking area must be located 50ft. from the residential lot to the north and must have a larger landscape buffer of 15 ft. instead of 10ft. as the neighboring property has. This mismatch of development pattern deprives Applicant a reasonable use and return on their investment as compared to the abutting property to the west and other properties in the vicinity. These facts create a special circumstance that does not apply generally to other property in the same zone district and vicinity of the subject site. No evidence to the contrary was presented.
8. Based on evidence submitted by or on behalf of Applicant, 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). Specifically, Agent submitted evidence that the proposed variance would allow Applicant to provide a new, specifically- designed building for the use of a modern dental office with state of the art equipment and service offered to the neighborhoods and general public. Such development of this site will contribute to new urban growth and help stabilize land use and property values for neighboring and surrounding properties. Additionally, the approval of the variance request will ultimately ensure less demand for available parking for employees and customers while reducing traffic congestion on the site. Developing this property will contribute to increased public safety, health, and welfare for the surrounding community because a vacant lot will be now used and maintained by a successful local business that provides a needed service to the community and general public. No evidence to the contrary was presented.
9. Based on evidence submitted by or on behalf of Applicant, 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). Specifically, Agent submitted evidence that the variance requested will allow the new dental office to operate more efficiently by using a row of parking spaces within the edge buffer. The parking spaces located behind the 15 ft. landscape buffer along the lot to the north are also separated from that lot by a 6ft. high wall and a significant lower grade which make the parked vehicles not visible from the neighboring property owner's side yard without making an effort to do so. Any adverse impacts are mitigated with the parking spaces located well below the grade of the lot to the north, but also through the use of the landscape buffer which consist of mostly trees planted along the residential boundary. No evidence to the contrary was presented.
10. Based on evidence submitted by or on behalf of Applicant, 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). Specifically, Applicant presented evidence that allow a quality infill development which furthers the purpose and intent of the IDO and applicable zone districts, because the variance, if granted, will (a) protect the quality and character of residential neighborhoods; (b) provide for the efficient administration of City land use and development regulations; (c) protect the health, safety, and general welfare of the public; (d) provide reasonable protection from possible nuisances and hazards and to otherwise protect and improve public health; and (e) ensure that all development in the City is consistent with the spirit and intent of any other plans and policies adopted by City Council. No evidence to the contrary was presented.

11. Based on evidence submitted by or on behalf of Applicant, 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). Specifically, evidence was presented that the Applicants would have to eliminate an entire row of parking without this variance. Thus, the applicants are not requesting more than what is minimally necessary for a variance. No evidence to the contrary was presented.
12. The proper “Notice of Hearing” signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
13. The Applicant has authority to pursue this Application.

DECISION:

APPROVAL of a variance of 20 ft to the minimum required 50 ft neighborhood edge buffer.

APPEAL:

If you wish to appeal this decision, you must do so by March 19, 2020 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.



---

Robert Lucero, Esq.  
Zoning Hearing Examiner

cc:

ZHE File  
Zoning Enforcement  
GC Gonzales LLC, 7930 Wyoming Blvd NE, Suite C, 87109  
Garcia/Kraemer & Assoc., 600 1<sup>st</sup> ST NW, Suite 211, 87102