



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

John and Brenda Gabaldon (Agent, Kim Rodarte-Wolf) request a variance of 4 FT 2 inches to the required 10 FT side setback on the south side of the lot for Lot 28, Block 2, SARATOGA, located at 5305 Hayes Drive NW, zoned R1-D [Section 14-16-2-3(B)(2)]

Special Exception No: **VA-2024-00025**
Project No: **Project#2023-009926**
Hearing Date: 04-16-24
Closing of Public Record: 04-16-24
Date of Decision: 05-01-24

On the 16th day of April, 2026, Kim Rodarte-Wolf (“Agent”) agent for applicants John and Brenda Gabaldon (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 4 feet 2 inches to the required 10 FT side setback on the south side of the lot (“Application”) upon the real property located at 5305 Hayes Dr NW (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 4 feet 2 inches to the required 10 feet street side setback.
2. The ZHE finds that the Applicant has authority to pursue this Application.
3. Applicant has duly authorized Agent to act on Applicant’s behalf regarding the Application.
4. All property owners within 100 feet and affected neighborhood association(s) were notified.
5. 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).
6. The City of Albuquerque Integrated Development Ordinance (“IDO”), Section 14-16-6-6(O)(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 a single lot 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, physical characteristics, natural forces or government actions for which no compensation was paid. Such special circumstances of the lot either create an extraordinary hardship in the form of a substantial and unjustified limitation on the reasonable use or economic 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.”

Applicant bears the burden of providing a sound justification for the requested decision, based on substantial evidence, pursuant to IDO Section 14-16-6-4(E)(3).

7. The applicant bears the burden of showing compliance with required standards through analysis, illustrations, or other exhibits as necessary, pursuant to IDO Section 14-16-6-4(E)(4).
8. Applicant/agent appeared and gave evidence in support of the application.
9. The subject property is currently zoned R-1D.
10. Based on evidence submitted by or on behalf of Applicant, it appears that 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, Applicant testified and confirmed in written submission that the lot has a unique shape and size, which makes strict compliance with minimum standards impractical.
11. 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, Applicant confirmed in written submission that the proposed variance is to allow for a home office that will not create additional traffic and will not change the nature of the home as it has existed prior to the Application.
12. 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). Applicant testified and confirmed the same in written submissions and Agent testimony.
13. Based on evidence submitted by or on behalf of Applicant, the variance [will not/will] 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). If granted, the variance would allow for orderly development of the Subject Property pursuant to IDO requirements.
14. 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). Agent testified and confirmed that any lesser variance would be impractical.
15. The City Traffic Engineer submitted a report stating no objection to the Application.

DECISION:

APPROVAL of a variance of 4 feet 2 inches to the required 10 FT side setback on the south side of the lot.

APPEAL:

If you wish to appeal this decision, you must do so by May 16, 2024 pursuant to Section 14-16-6-4(V), 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
John and Brenda Gabaldon 5305 Hayes Dr NW
Kim Rodarte - Wolf kimwolf25@gmail.com
8706 Woodland Ave NE, 87112