



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

JOHN & AGNES ARAGON requests a special exception to Section 14-16-2-6(E)(4)(a) : a VARIANCE request of 5ft to the 10ft side setback required to allow a proposed addition for all or a portion of Lot 5, Block 3, Montgomery Heights Addn zoned R-1, located on 3516 DELAMAR AV NE (G-16)

Special Exception No:..... **15ZHE-80289**  
Project No:..... **Project# 1010681**  
Hearing Date:..... 01-19-16  
Closing of Public Record:..... 01-19-16  
Date of Decision: ..... 02-03-16

On the 19th day of January, 2016 (hereinafter “**Hearing**”) AGNES ARAGON (hereinafter “**Applicant**”) appeared before the Zoning Hearing Examiner (hereinafter “**ZHE**”) requesting a Variance of 5ft to the 10ft side setback required to allow a proposed addition (hereinafter “**Application**”) upon the real property located at 3516 DELAMAR AV NE (“**Subject Property**”).

**FINDINGS:**

1. Applicant is requesting a Variance of 5ft to the 10ft side setback required to allow a proposed addition.
2. The City of Albuquerque Zoning Code of Ordinances Section § 14-16-4-2 (C) (2) “SPECIAL EXCEPTIONS – VARIANCE” reads in part: “A variance application shall be approved by the Zoning Hearing Examiner, if and only if, the Zoning Hearing Examiner finds all of the following:  
(a) The application is not contrary to the public interest or injurious to the community, or to property or improvements in the vicinity;  
(b) There are special circumstances applicable to the subject property which 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;  
(c) Such special circumstances were not self-imposed and create an unnecessary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the property that need not be endured to achieve the intent and purpose of the Zoning Code (§14-16-1-3) and the applicable zoning district; and  
(d) Substantial justice is done.”
3. Applicants seek a variance to permit construction of a bedroom and bathroom expansion and renovation. Applicants have been approved for a grant from the Veterans Administration to remodel the existing house to allow for access for reduced mobility.
4. The existing bedroom and bathroom are located in the southeast corner of the existing structure.

5. The required setback for the Subject Property is ten feet. However, the existing setback of the residence is five feet on the east side. It is unclear how the existing house was constructed, in 1975, or whether it is in fact legal nonconforming.
6. The Subject Property is seventy-five feet in width. The applicable code provision, Section 14-16-2-6, is a “sliding” setback requiring a five-foot setback for lot widths up to 65 feet, and one additional feet up to ten feet at a seventy-foot width.
7. The Subject Property, at seventy-five feet, thus requires a ten-foot setback.
8. The Subject Property is wider than surrounding properties, which are subject to the five-foot setback.
9. The Subject Property is bordered by an alley, and a commercial building on the east and by nonresidential property on the south.
10. The ZHE finds that the Applicants have met their burden of providing evidence (both oral testimony and written material) that establishes that the Application is not going to be: **(i)** contrary to the public interest, **(ii)** injurious to the community; or **(iii)** injurious to the property/improvements located in the nearby vicinity of the Subject Property, as required pursuant to Section § 14-16-4-2 (C) (2) (a).
11. The proposed addition will not interfere with light, views or access. It will not present a nuisance or permit any different use of the Subject Property. The proposed addition will not create noise, light, fumes, odors or other detrimental conditions.
12. Further, the Application and testimony of the Applicant at the Hearing suggest that there is no neighborhood opposition to the Application.
13. The ZHE finds that the Applicants have met their burden of providing evidence (both oral testimony and written material) that establishes that there are “special circumstances” applicable to the Subject Property which do not apply generally to other property in the same zone and vicinity, as required pursuant to Section § 14-16-4-2 (C) (2) (b).
14. The special circumstances here are the unusually wide lot, which triggers the larger setback and is not characteristic of other similar properties.
15. Additionally, the Subject Property abuts only one other residential property, which is on the opposite side of the subject residence and will not be affected.
16. The ZHE finds that the Applicants have met their burden of providing evidence (both oral testimony and written material) that establishes that the special circumstances presented hereinabove were not “self-imposed”, and that those special circumstances create an unnecessary hardship upon the Applicants, which constitutes an “*unjustified limitation on the reasonable use of the Subject Property*” as required pursuant to Section § 14-16-4-2 (C) (2) (c).
17. Specifically, Applicants were not responsible for construction of the residence (built over 40 years ago) with the setback discrepancy, or the design of the residence placing the bedroom and bathroom on the side of the house where the nonconforming setback occurs.
18. Moreover, Applicants are not responsible for Mr. Aragon’s need for accessible design, although they are subject to an unnecessary hardship on that basis if the request is denied.
19. The ZHE finds that the Applicants have met their burden of providing evidence (both oral testimony and written material) that establishes that substantial justice will be

done if this Application is approved, as required pursuant to Section § 14-16-4-2 (C) (2) (d), for the foregoing reasons.

20. The ZHE finds that the yellow “Notice of Hearing” signs were posted for the required time period as articulated within City of Albuquerque Code of Ordinances § 14-16-4-2 (B) (4).

### **CONCLUSIONS OF LAW:**

The Applicants have met their burden of submitting an Application that provides evidence that satisfies the elements required within §14-16-4-2 (C) (2) of the Albuquerque Zoning Code.

### **DECISION:**

**APPROVAL** of a **VARIANCE** of 5ft to the 10ft side setback required to allow a proposed addition.

If you wish to appeal this decision, you may do so in the manner described below:

Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, Planning Application Counter located on the west side of the lobby. **Please present this letter of notification when filing an appeal.** When an application is withdrawn, the fee shall not be refunded.

An appeal shall be heard by the Board of Appeals within 45 days of the appeal period and concluded within 75 days of the appeal period. The Planning Division shall give written notice of an appeal, together with a notice of the date, time and place of the hearing to the applicant, a representative of the opponents, if any are known, and the appellant.

Please note that pursuant to Section 14. 16. 4. 4. (B), of the City of Albuquerque Comprehensive Zoning Code, you must demonstrate that you have legal standing to file an appeal as defined.

You will receive notice if any other person files an appeal. If there is no appeal, you can receive building permits any time after the appeal deadline quoted above, provided all conditions imposed at the time of approval have been met. However, the Zoning Hearing Examiner may allow issuance of building permits if the public hearing produces no objection of any kind to the approval of an application. To receive this approval, the applicant agrees in writing to return the building permit or occupation tax number.

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.



Christopher L. Graeser, Esq.  
Zoning Hearing Examiner

cc: Zoning Enforcement  
ZHE File