EDWARD & KAY BOCIAN (EFTHIMIOS MANIATIS, AGENT) requests a special exception to Section 14-16-2-6(E)(3)(b) : a VARIANCE of 6 ft 10 in to the required 10 ft corner side yard setback for a proposed addition for all or a portion of Lot 9, Block 13, Ridgecrest Addn zoned R-1, located on 1611 RIDGECREST CIR SE (L-17)

Special Exception No:.............16ZHE-80318
Project No:....................Project# 1011070
Hearing Date:..................01-03-17
Closing of Public Record:....01-03-17
Date of Decision:.............01-18-17

On the 3rd day of January, 2017, EFTHIMIOS MANIATIS, acting as agent on behalf of the property owner EDWARD & KAY BOCIAN ("Applicant") appeared before the Zoning Hearing Examiner ("ZHE") requesting a variance of 6 ft 10 in to the required 10 ft corner side yard setback ("Application") upon the real property located at 1611 RIDGECREST CIR SE ("Subject Property"). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 6 ft 10 in to the required 10 ft corner side yard setback.

2. The City of Albuquerque Zoning Code of Ordinances Section 14-16-4-2 (C)(2) (Special Exceptions – Variance) reads: “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. The Applicant bears the burden of ensuring there is evidence in the record supporting a finding that the above criteria are met under Section 14-16-4-2(C).
4. The ZHE finds that Application is not: (i) contrary to the public interest, (ii) injurious to the community; or (iii) injurious to the property or improvements located in the vicinity as required by Section 14-16-4-2 (C)(2)(a).

5. Specifically, the ZHE finds that the proposed variance will not interfere with the views, light or access of other residents or impact neighborhood character or security. There is no resultant increase in intensity of use, noise or traffic. The site plan as proposed is appropriate in the context of the surrounding development.

6. Moreover, this variance was previously approved without apparent concern of injury.

7. The ZHE finds that 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, as required by Section 14-16-4-2 (C)(2)(b).

8. Specifically, the ZHE finds that the unique shape of the lot and site development constitute special circumstances.

9. Moreover, under Section 14-16-3-3(A)(3)(b) “A setback variance may be approved… even though there is only a minimal showing as to exceptional physical conditions [for] Houses located on lots created when side-yard setback requirements were less severe and the lot’s dimensions make it unreasonable to require the current side-yard setback requirements.” Here, the structure was built before enaction of the applicable zoning.

10. The ZHE finds that 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 district, as required by Section 14-16-4-2 (C)(2)(c).

11. Specifically, the ZHE finds that Applicants are not responsible for the special circumstances.

12. The ZHE finds that substantial justice will be done if this Application is approved, as required pursuant to Section 14-16-4-2 (C)(2)(d).

13. The ZHE finds that the proper “Notice of Hearing” signage was posted for the required time period as required by Section 14-16-4-2(B)(4).

14. The ZHE finds that the Applicant has authority to pursue this Application.

CONCLUSIONS OF LAW:

The criteria within Section 14-16-4-2(C)(2) of the Albuquerque Zoning Code are satisfied.

DECISION:

APPROVAL of a variance of 6 ft 10 in to the required 10 ft corner side yard setback.

If you wish to appeal this decision, you must do so by February 2, 2017, in the manner described below. A non-refundable filing fee will be calculated at the Planning
Department’s Land Development Coordination counter and is required at the time the
Appeal is filed.

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.

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Zoning Hearing Examiner

cc: Zoning Enforcement
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