



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

Mark O. Lee requests a variance of 2 feet to the required 15 foot rear yard setback for Lot 39A, Block 90, Snow Heights Addn, located at 11209 Elvin Ave NE, zoned R-1B [Section14-16-5-1(C)(1)]

Special Exception No:..... **VA-2018-00123**  
Project No:..... **Project# 2018-001620**  
Hearing Date: ..... 11-20-18  
Closing of Public Record: ..... 11-20-18  
Date of Decision: ..... 12-05-18

On the 20th day of November, 2018, property owner Mark O. Lee (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 2 feet to the required 15 foot rear yard setback (“Application”) upon the real property located at 11209 Elvin Ave NE (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 2 feet to the required 15 foot rear 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 14-14-6-4(F)(2).
4. Mark O. Lee, 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. Enchanted Park Neighborhood Association is the affected neighborhood association.
7. No opposition or request for a meeting was submitted.

8. The subject property is currently zoned R-1.
9. The subject property was created by combining two smaller lots.
10. It is a corner lot, with a unique shape.
11. There is a power/telephone pole on the NW corner of the subject property.
12. This pole must remain accessible for maintenance purposes to all utility, satellite and internet providers.
13. 13 feet of the 15 foot back yard setback is provided for this access.
14. The Applicant is requesting reinstatement of prior ZHE approvals for the same requested setback variance.
15. 11-ZHE-80185A was approved 08-16-2011 granted a variance request of 2 feet to the required 14 foot rear yard setback.
16. This ZHE approval expired June 2018.
17. The ZHE found the variance was not injurious to the adjacent properties and surrounding community.
18. This request had the support of his neighbors.
19. The proposed building structure will be setback 5-6 feet from the back of the sidewalk.
20. Transportation Conditionally Approved the application after review of the revised site plan drawing.
21. No one appeared in opposition to the application.
22. 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).
23. 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).
24. 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).
25. 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).
26. 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).
27. The proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
28. The Applicant has authority to pursue this Application.

DECISION:

APPROVAL of a variance of 2 feet to the required 15 foot rear yard setback.

CONDITIONS: Applicant shall comply with all applicable Use-Specific Standard Sections.

If you wish to appeal this decision, you must do so by December 20, 2018 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 must be filed with the Planning Department within 15 days after the decision. The appeal shall specifically state the section of the Integrated Development Ordinance, City regulation, or condition attached to a decision that has not been interpreted correctly, as required by Section 14-16-6-4(U)(3)(a)(3) of the Integrated Development Ordinance. 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.

Once an appeal is accepted by the Planning Department, it shall prepare and transmit a record of the appeal together with all appeal material received from the appellant to impacted parties and to the Land Use Hearing Officer (LUHO) through the Clerk of the City Council.

The LUHO shall then schedule a hearing on the matter within 30 consecutive days of receipt and notify the parties, pursuant to Section 14-16-6-4(U)(3)(d).

The Planning Department 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 14-16-6-4(U), of the Integrated Development Ordinance, 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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Stan Harada, Esq.  
Zoning Hearing Examiner

cc: Zoning Enforcement  
ZHE File  
Mark O. Lee, 11209 Elvin Ave NE, 87112  
Tira Pacheco, 11201 Elvin NE, 87112