On the 16th day of April, 2019, property owner Ramon Orozco (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 5 ft to the required 5 ft side yard setback (“Application”) upon the real property located at 6140 Full Moon Ave NW (“Subject Property”). Below are the ZHE’s findings of fact and decision:

**FINDINGS:**

1. Applicant is requesting a variance of 5 ft to the required 5 ft side 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 14-16-6-4(N)(1).
4. Ramon Oroza, property owner appeared and gave evidence in support of the application.
5. The subject property address is 6140 Full Moon Ave NW.
6. The subject property is currently zoned R-T.
7. A site plan and photographs of the subject property and the area impacted by the requested variance were submitted in support of the application.
8. All property owners within 100 feet of the subject property and the affected neighborhood association were notified.
9. There is no affected neighborhood association.
10. Property owner is a disabled veteran, physically required to use a walker.
11. The proposed project will complete construction of an extension to the roof of the existing residence.
12. The structure is existing and was built without a permit.
13. Rain and snow roof drainage currently is deposited on a small sidewalk running parallel to the residence.
14. This drainage is creating an extreme safety and health hazard to owner.
15. During cold and winder weather, owner must negotiate his walker around accumulated snow and ice, creating a danger to his health and safety.
16. The side yard area is used as a dog run and is enclosed by a gate and fencing on the end.
17. Pam Wiley, 6136 Full Moon NW, appeared and gave evidence in opposition to the Application.
18. She is the adjacent neighbor on the side affected by the request.
19. The existing structure is a patchwork of mixed materials, wood, plastic corrugated sheeting.
20. The structure creates substantial runoff during heavy storms.
21. The existing structure creates and adverse impact on her adjacent property.
22. The gutter added by Applicant increased the amount of run off onto her property.
23. She has been required to construct drains and other methods to deal with the runoff.
24. This side yard is next to her bedroom, and Applicant uses this side yard as a dog run. He confines his animals for long periods and they constantly bark.
25. Don Kendall, 6144 Full Moon Ave NW, appeared and gave neutral evidence regarding the Application.
26. He is the adjacent property owner on the other side of the subject property.
27. He is not opposed to the Application.
28. He had commented that Applicant and he had resolved issues involving drainage and that Applicant had resolved the matter to his satisfaction.
29. He had no information regarding Pam Wiley’s drainage issues with Applicant.
30. Applicant agreed to alter or otherwise modify the structure to prevent overflow drainage to continue to flow onto adjacent neighbor Wiley.
31. 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).
32. 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).
33. 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).
34. 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).
35. 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).
36. The proper “Notice of Hearing” signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
37. The Applicant has authority to pursue this Application.

**DECISION:**

APPROVAL of a variance of 5 ft to the required 5 ft side yard setback.

**CONDITIONS:**

Applicant shall modify or alter the structure to prevent overflow drainage to continue to flow onto adjacent neighbor Wiley.

**APPEAL:**

If you wish to appeal this decision, you must do so by May 16, 2019 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.

_______________________________
Stan Harada, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
    ZHE File
    Ramon Orozco, 6140 Full Moon Ave NW, 87114
    Pam Wiley, 6136 Full Moon Ave NW, 87114
    Daniel Kendall, 6144 Full Moon Ave NW, 87114