Adrian Martinez requests a variance to the required 5ft garage set back from front facade to allow garage to extend 22.5ft in front of façade to Lot 26, Block 5, Volcano Cliffs Unit 5, located at 8016 Victoria Dr NW, zoned R-1D [Section 14-16-3-4(M)]

On the 16th day of April, 2019, Yolanda Montoya, agent for property owner Adrian Martinez ("Applicant") appeared before the Zoning Hearing Examiner ("ZHE") requesting a variance to the required 5ft garage set back from front facade to allow garage to extend 22.5ft in front of façade ("Application") upon the real property located at 8016 Victoria Dr NW ("Subject Property"). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of the required 5ft garage set back from front facade to allow garage to extend 22.5ft in front of façade.
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. Yolanda Montoya, agent for Adrian Martinez, property owner appeared and gave evidence in support of the application.
5. The subject property address is 8016 Victoria Dr. NW.
6. A site plan and elevations was submitted in support of the Application.
7. All property owners within 100 feet of the subject property and the affected neighborhood association were notified.
8. Molten Rock Neighborhood Association is the affected neighborhood association.
9. The subject property is currently zoned R-1D.
10. The subject property is within the Volcano Mesa, and the development standards are established in CPO-12.
11. The requested variance is from the Character Protection Overlay standards, CPO-12, Volcano Mesa, requiring front garage setback from front façade of 5 feet minimum.
12. The variance would allow the front façade of the garage to extend 8 feet 9 inches in front of the façade for a total variance of 22 feet and 6 inches.
13. Other garages in the surrounding area are constructed with garage facades in front of the residence façade, under the previous building codes.
14. This set-back standard was effective with the change to the IDO.
15. The subject property is unique, in that it is pie shaped with the narrow entry dimension on a cul-de-sac.
16. Most of the other lots in this neighborhood are rectangular shaped.
17. The wider dimension of the property is the rear property line.
18. The house was designed to sit at an angle to the lot in order to accommodate the required setbacks.
19. The Applicant purchased the subject property in 2012 and paid to have the house designed to comply with the requirements of the previous building codes.
20. The subject property and plans drawn to accommodate the unusual shape and dimensions of the property were purchased and paid for prior to the IDO becoming effective.
21. The primary change imposed by the IDO, is to require placement of the garage behind the front façade of the home.
22. To change the design to conform to the new IDO standards would impose a severe economic hardship, create practical difficulties and would prevent applicant from effectively developing his property.
23. Applicant already has financing in place and is currently paying interest on the loan.
24. If request is not granted, it would impose an extreme hardship on him, as he would be required to redesign the entire project to comply with the new IDO requirements, at a considerable expense.
25. Photos of other properties within the development, showing garage faces in front of residence facades, were submitted in support of the Application.
26. The subject property is within a View Protection Overlay Zone, the Northwest Mesa Escarpment and is regulated by VPO-2.
27. 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).
28. 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).
29. 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).
30. 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).
31. 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).
32. The proper “Notice of Hearing” signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
33. The Applicant has authority to pursue this Application.

DECISION:

APPROVAL of a variance of the required 5ft garage set back from front facade to allow garage to extend 22.5ft in front of facade.

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.

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Stan Harada, Esq.
Zoning Hearing Examiner

cc:  Zoning Enforcement
     ZHE File
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     Yolanda Montoya, 8724 Alameda Park DR NW, 87113