



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

Kallison Ranch of Virginia Limited Partnership LLP requests a variance of 10 ft to the required 20 ft front yard setback for Lot B6, Cottonwood Corners, located at 3801 Ellison DR NW, zoned NR-BP [Section 14-16-5-1-E(1)]

Special Exception No:..... **VA-2019-00202**  
Project No: ..... **Project#2019-002507**  
Hearing Date: ..... 08-20-19  
Closing of Public Record: ..... 08-20-19  
Date of Decision: ..... 09-04-19

On the 20th day of August, 2019, Esencia Architecture LLC, agent for property owner Kallison Ranch of Virginia Limited Partnership LLP (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 10 ft to the required 20 ft front yard setback (“Application”) upon the real property located at 3801 Ellison DR NW (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 10 ft to the required 20 ft front 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. Dan Phillip O’Bryan, Jr., operator of the subject business, 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. Westside Coalition of Neighborhood Associations is the affected neighborhood association.
7. The neighborhood association was notified by e-mail dated June 23, 2019.
8. No response or request for a meeting has been submitted.
9. The subject property is currently zoned NR-BP.
10. The address of the subject property is 3801 Ellison Rd. NW.
11. The proposed project is the addition of two (2) canopies covering the drive-through of an existing Chick Fil-A Restaurant, which has been on this site since 2004.
12. There are no requested changes to the driveway itself.
13. The existing drive through currently encroaches into the Ellison Road front setback requirement.
14. The proposed canopies would slightly encroach into the required setback for Ellison Road.
15. This proposed project will create a safer environment for employees and customers, will increase efficiencies of the existing business and enhance interactions between employees and customers.
16. A site plan and drawing and photographs are submitted in support of the Application.
17. The drive through already exists and the proposed canopies would protect workers from adverse weather and would enhance employee and customer safety.
18. High volume business, sometimes creates backups in ordering because of the presently existing single ordering station and the proposed canopies will allow expansion to 3 order stations.
19. This proposed change will greater enhance efficiencies and should remove the traffic backup, and consequently increase the public safety and actually remove traffic congestion.
20. There are no requested changes in landscaping.
21. Changes made to property before opening, involving ingress and egress, created a site plan that jutted slightly into the Ellison Road setback areas.
22. The IDO changed setback requirements requiring this request.
23. Transportation has reported no objection to the Application.
24. No one appeared in opposition to the Application.
25. 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).
26. 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).
27. 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).
28. 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).
29. 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).
30. The proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
31. The Applicant has authority to pursue this Application.

DECISION:

APPROVAL of a variance of 10 ft to the required 20 ft front yard setback.

APPEAL:

If you wish to appeal this decision, you must do so by September 19, 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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Zoning Hearing Examiner

cc: ZHE File  
Zoning Enforcement  
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