



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

Salem Islar requests a variance of 5 ft to the required 5 ft garage setback from front façade for Lot 7, Block 7, Volcano Cliffs Unit 2, located at 7911 Kibo DR NW, zoned R-1D [Section 14-16-3-4(M)(5)(c)]

Special Exception No:..... **VA-2019-00206**
Project No: **Project#2019-002524**
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, Leo Otero, agent for property owner Salem Islar (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 5 ft to the required 5 ft garage setback from front façade (“Application”) upon the real property located at 7911 Kibo DR 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 garage setback from front 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. Eric Spurlock, agent for Salem Islar, property owner appeared and gave evidence in support of the application.
5. Salem Islar, property owner also appeared and gave evidence in support of the Application.

6. The address of the subject property is 7911 Kibo Dr. NW.
7. All property owners within 100 feet of the subject property and the affected neighborhood association were notified.
8. Westside Coalition of Neighborhood Association and Molten Rock Neighborhood Association are the affected neighborhood associations.
9. A letter from Mary Ann Wolf-Lyerla, President of the Molten Rock Neighborhood Association, dated July 29, 2019, was submitted in opposition to the Application.
10. The primary reason given for MRNA's opposition is "equity and fairness for those who designed their homes to scrupulously observe the setback covenants".
11. The NA also expressed "grave concerns that permitting these variances opens the door to future and potentially more egregious requests".
12. The subject property is currently zoned R-1D.
13. The subject property is within Character Protection Overlay (CPO-12) and within View Protection Overlay (VPO-2).
14. The subject property is currently undeveloped.
15. The proposed project is construction of a new single-family residence.
16. The variance requested is from Section 14-16-3-4(M)(5)(c): *Character Protection Overlay Zone: Volcano Mesa CPO-12: Other Development Standards: Residential Garage Access; Table 3-4-1: Allowable Garage Types in Volcano Mesa.*
17. The proposed project is designed with a 4-vehicle side entry garage.
18. The front façade of the house faces south and the entry of the garage is westerly.
19. The side wall of the garage is parallel to the front façade.
20. The variance is needed to allow the 4-vehicle garage to fit the project.
21. The shape of the subject lot is irregular and wedge shaped.
22. A site plan and accompanying photographs were submitted in support of the Application.
23. The original Application included variance requests for side and front setback requirements, however, the site plan was redesigned and these variance requests are withdrawn and this hearing is only for the garage setback requirement from the front façade.
24. The original design of the project was completed prior to the enactment of the IDO.
25. The garage setback requirements were imposed through the Character Protection Overlay of Volcano Mesa (CPO-12) of the IDO.
26. The IDO and CPO became effective May 2019.
27. Eric Spurlock, 4404 Magnolia Dr. NE, appeared and gave testimony in support of the Application.
28. He is the designing architect on the project.
29. He and the Applicant listened to the MRNA and made modifications on the proposed plan to include a 2 feet offset to break the front façade.
30. The south sidewall of the garages would be set back and would include additional landscaping to further break the front façade.
31. A modified site plan dated July 2, 2019 and renderings of all views of the house were submitted in support of the Application.
32. Sandra Levinson, 7909 Tebo Dr. NW, appeared and gave testimony in opposition to the Application.
33. She is in the MRNA and has been a resident of the neighborhood for 10 years.

34. The NA's primary objection is a general one, stating "the Code is the Code" and everyone else has been required to follow the covenants and restrictions and does not feel it fair to make any exceptions.
35. The concerns of the NA is that if one variance is granted, it will open it up for more outrageous requests.
36. Applicant in reply stated that the proposed plan has been modified to keep the front façade from appearing monolithic and additional landscaping would be added to keep it interesting.
37. Applicant also stated the request made does not impact adjacent properties or anyone else, and would be the minimum necessary to prevent economic hardship.
38. 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).
39. 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).
40. 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).
41. 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).
42. 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).
43. The proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
44. The Applicant has authority to pursue this Application.

DECISION:

APPROVAL of a variance of 3 ft to the required 5 ft garage setback from front façade.

CONDITIONS:

Applicant stipulated to a 2 foot setback, with landscaping added.

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.



Stan Harada, Esq.
Zoning Hearing Examiner

cc: ZHE File
Zoning Enforcement
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Leo Otero, 6157 Agate Ave NW, 87120
Sandra Levinson, 7909 Kibo DR NW, 87120
Eric Spurlock, 4404 Magnolia DR NE, 87111