



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

Linda and Mary and Donald Roth request a variance of 2 ft 6in to the required 5 ft side yard setback for Lot 14, Block 10, Loma Verde, located at 308 San Pablo ST NE, zoned R-ML [Section 14-16-5-1(C)]

Special Exception No:..... **VA-2019-00218**
Project No: **Project#2019-002583**
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, property owner Linda and Mary and Donald Roth (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 2 ft 6 inches to the required 5 ft side yard setback (“Application”) upon the real property located at 308 San Pablo ST NE (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 2 ft 6 inches 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. David Santistevan at Ultra Designs, agent for Linda and Donald Roth, property owners appeared and gave evidence in support of the application.
5. The address of the subject property is 308 San Pedro St. NE.

6. All property owners within 100 feet of the subject property and the affected neighborhood association were notified.
7. La Mesa Community Improvement Association and District 6 Coalition of Neighborhood Associations are the affected neighborhood associations.
8. No response nor request for meeting has been submitted.
9. The subject property is currently zoned R-ML.
10. The variance is requested from Section 14-16-5-1: Development Standards; Dimensional Standards; Residential Zone Districts; Table 5-1-1: Residential Zone District Dimensional
11. The proposed project is to construct a covered patio and carport.
12. David Roth, a co-owner of the property, is a 100% disabled vet, and the patio structure will be utilized primarily for physical and rehab therapy.
13. The carport would provide him protection when accessing his vehicle.
14. His bedroom would exit directly onto the proposed area for ease of access for his wheelchair.
15. The structure would have gutters and downspouts too, so the rainwater runoff is directed back onto the subject property and would not adversely impact adjacent properties.
16. The structure would be painted to match the existing primary building.
17. Co-owner Linda Roth, is his spouse and his caretaker.
18. Transportation has reported No Objection to the Application.
19. No one appeared in opposition to the request.
20. 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).
21. 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).
22. 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).
23. 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).
24. 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).
25. The proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
26. The Applicant has authority to pursue this Application.

DECISION:

APPROVAL of a variance of 2 ft 6in to the required 5 ft side 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.



Stan Harada, Esq.
Zoning Hearing Examiner

cc: ZHE File
Zoning Enforcement
Linda and Mary and Donald Roth, 308 San Pablo ST NE, 87108
David Santistevan, 6712 Mesa Antigua PL NW, 87120
Donald Roth, 4777 Jessica DR NE, Rio Rancho, 87144