



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

Samantha Montoya requests a variance of 10 ft to the minimum 20 ft street side yard setback for Lot 3, Contreras Addn, located at 2208 Rio Grande Blvd NW, zoned R-1C [Section 14-16-3-4(K)]

Special Exception No:..... **VA-2019-00191**
Project No: **Project#2019-002481**
Hearing Date: 07-16-19
Closing of Public Record: 07-16-19
Date of Decision: 07-31-19

On the 16th day of July, 2019, Yolanda Montoya, agent for property owner Samantha Montoya (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 10 ft to the minimum 20 ft street side yard setback (“Application”) upon the real property located at 2208 Rio Grande Blvd 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 minimum 20 ft street 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. The variance is requested from Section 14-16-3: *Overlay Zones; Rio Grande Blvd – CPO – 10, 3-4(K)(3)(b): Setback Standards.*
5. Yolanda Montoya, agent for Samantha Montoya, property owner appeared and gave evidence in support of the application.

6. The subject property address is 2208 Rio Grande Blvd. NW.
7. All property owners within 100 feet of the subject property and the affected neighborhood association were notified.
8. North Valley Coalition; Los Duranes Neighborhood Association and Rio Grande Blvd. Neighborhood Association are the affected neighborhood associations.
9. Applicant and her agent met with Rio Grande Blvd. NA and Los Duanes NA.
10. Agent reported that both NAs were generally opposed to the requests and expressed orally that they would like to keep the new IDO setback requirements in place.
11. No written response or report from any NA was submitted.
12. The subject property is currently zoned R-1C.
13. The subject property is within Character Protection Overlay CPO-10 *Rio Grande Blvd.*
14. Applicant purchased the subject property from her grandfather.
15. The subject lot is irregularly and uniquely shaped.
16. The existing residence is substandard and is to be demolished and removed.
17. The proposed project is construction of a new single family, single story residence.
18. The subject property was purchased prior to the IDO.
19. The IDO has changed setback requirements on the subject property.
20. CPO-10 *Rio Grande Blvd.* 14-16-3-4(K)(3) requires front, side and rear setbacks for all properties facing Rio Grande Boulevard to be 20 feet minimum.
21. The proposed construction and site plan were paid for and designed in compliance with previous setback requirements prior to the IDO.
22. A site plan and accompanying photographs were submitted in support of the application.
23. The requested variances would result in a structure with a 10 foot setback on the Rio Grande Blvd. side (west), 5 feet on side yard (east), and 15 feet to the rear yard (south) and 20 feet on Contreras Place (North).
24. Driveway entrance to the project will be via Contreras Place NW, through an existing curb-cut.
25. No one appeared in opposition to the Application.
26. 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).
27. 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).
28. 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).
29. 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).
30. 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).
31. The proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
32. The Applicant has authority to pursue this Application.

DECISION:

APPROVAL of a variance of 10 ft to the minimum 20 ft street side yard setback.

APPEAL:

If you wish to appeal this decision, you must do so by August 15, 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
Samantha Montoya, 2208 Rio Grande Blvd NW, 87104
Yolanda Montoya, 8724 Alameda Park DR NE, Ste G, 87113