



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

Sonia Rodriguez requests a variance of 2 feet to the required 25 foot front yard setback for Lot 21, Block 6, Volcano Cliffs Unit 18, located at 6505 Pato RD NW, zoned R-1D [Section 14-16-3-4(M)(3)]

Special Exception No:..... **VA-2019-00317**  
Project No: ..... **Project#2019-002891**  
Hearing Date: ..... 11-19-19  
Closing of Public Record: ..... 11-19-19  
Date of Decision: ..... 12-04-19

On the 19th day of November, 2019, property owner Sonia Rodriguez (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 2 feet to the required 25-foot front yard setback (“Application”) upon the real property located at 6505 Pato RD NW (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 2 feet to the required 25 foot 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. Sonia Rodriguez, property owners, appeared and gave evidence in support of the application.
5. The address of the subject property is 6505 Pato Rd.
6. The subject property is currently zoned R-1D.

7. The subject property is located within a *Character Protection Overlay Zone District, VOLCANO MESA CPO-12*, which is regulated by Section 14-16-3-4(M).
8. The subject property is located with *View Protection Overlay Zone, NORTHWEST ESCARPMENT – VPO-2*, which is regulated by Section 14-16-3-6(E).
9. The request is for a variance from Section 14-16-3-4(M)(3): *Character Protection Overlay Zones; VOLCANO MESA -CPO-12; Setback Standards (Front), minimum*.
10. The front yard setback required in CPO-12 is 25-feet.
11. The request is for a variance of 2 feet to the required 25 foot minimum front yard setback.
12. The single-family residence already constructed on the subject property is not in compliance with the required front yard minimum setback.
13. The front of the structure is 23 feet from the property line.
14. Applicant purchased the subject, while construction was still on-going.
15. Applicant purchased the subject property in 2017.
16. The construction of the house was begun sometime in 2015.
17. The IDO became effective, May 2018.
18. All property owners within 100 feet of the subject property and the affected neighborhood association were notified.
19. Westside Coalition of Neighborhood Associations is the affected neighborhood association.
20. The neighborhood associations were notified by e-mail dated September 6, 2019.
21. No response nor request for meeting has been submitted.
22. A site plan, with detailed drawings, elevations and construction drawing were submitted in support of the Application.
23. Transportation issued a report indication no objection to the Application.
24. No one appeared in opposition to the Application.
25. The residence was constructed and completed prior to the enactment of the IDO.
26. Applicant purchased the subject residence before the enactment of the IDO.
27. The enactment of the IDO changed the front yard setback requirements in CPO – 12.
28. 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).
29. Since the residence has been in place for some time, no complaints have been expressed and no adjacent neighbors have stated opposition for to the request, there has been no impact to the public safety, health or welfare.
30. 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).
31. There is no evidence of adverse impacts on surrounding properties or infrastructure improvements in the vicinity.
32. 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).
33. Approval of the request will allow the existing single-family residence to remain although not in compliance with the IDO standards.
34. The request will protect the quality and character of residential neighborhoods; provide for the efficient administration of land use and development regulations in the City; protect the

health, safety and welfare of the public; and ensure development in the City is consistent with the spirit and intent of the IDO.

35. 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).
36. Applicant would be required to remove 2 feet from the front of the entire structure in order to come into compliance with the CPO-12 front yard setback required.
37. This would result in extreme financial hardship to the Applicant.
38. The variance will allow Applicants to avoid the extraordinary expense and practical hardship of removing the walls and requiring other severe alterations to the primary residence.
39. 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).
40. The proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
41. The Applicant has authority to pursue this Application.

CONCLUSIONS OF LAW:

The criteria within Section 14-16-6-6(N)(3)(a) of the Albuquerque IDO are satisfied.

DECISION:

APPROVAL of a variance of 2 feet to the required 25 foot front yard setback.

APPEAL:

If you wish to appeal this decision, you must do so by December 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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Stan Harada, Esq.  
Zoning Hearing Examiner

cc: ZHE File  
Zoning Enforcement  
Sonia Rodriguez, 6505 Pato RD NW, 87120