



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

Jose Gamboa requests a variance of 10ft to the required 10ft street side-yard setback for Lot 46, Block A, Desert Springs Unit 1, located at 7805 Silverberry RD SW, zoned R-1A [Section 14-16-5-19(C)]

Special Exception No:..... **VA-2019-00337**  
Project No: ..... **Project#2019-002940**  
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 Jose Gamboa (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 10ft to the required 10ft street side-yard setback (“Application”) upon the real property located at 7805 Silverberry RD SW (“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 10 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. Jose Gamboa, property owners, appeared and gave evidence in support of the application.
5. The address of the subject property is 7805 Silverberry Rd. SW.
6. The subject property is currently zoned R-1A.

7. The request is for a variance from Section 14-16-5-1(C)(1): ***DEVELOPMENT STANDARDS; Residential Zone District Table; Table 5-1-1: Residential Zone District Dimensional Standards; Setback Standards; Side, minimum.***
8. The side yard setback required on corner lot in an R-1A zone district is 10 feet.
9. All property owners within 100 feet of the subject property and the affected neighborhood association were notified.
10. South West Alliance of Neighborhoods (SWAN); Westside Coalition of Neighborhood Associations and South Valley Coalition of Neighborhood Associations are the affected neighborhood associations.
11. The neighborhood associations were notified by e-mail dated July 11, 2019.
12. No response nor request for meeting has been submitted.
13. The request is for a variance of 10 feet to the required 10 foot minimum side yard setback.
14. The request is to allow construction of a shade structure to continue.
15. Construction of the structure was begun without a permit.
16. The subject lot is a corner lot, on the corner of Silverberry Rd. SW and Desert Springs Dr. SW.
17. There are no adjacent neighbors located on the Desert Springs Dr. side of the property.
18. A site plan, with detailed drawings, elevations, photographs and construction drawing were submitted in support of the Application.
19. The structure will have a metal roof, no sides and is not located within the clear sight triangle.
20. Transportation issued a report indication no opposition to the Application.
21. No one appeared in opposition to the Application.
22. 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).
23. Since the patio has been in place for some time, no complaints have been expressed and all adjacent neighbors have expressed support for the request, there has been no impact to the public safety, health or welfare.
24. Applicant's health and safety has been enhanced by the project.
25. 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).
26. There is no evidence of adverse impacts on surrounding properties or infrastructure improvements in the vicinity.
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. Approval of the request will allow the existing enclosed patio to come into compliance with IDO's permitting requirements and to conform to the IDO standards.
29. 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.
30. 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).

31. 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.
32. 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).
33. The proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
34. The Applicant has authority to pursue this Application.

CONCLUSIONS OF LAW:

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

DECISION:

APPROVAL of a variance of 10 ft to the required 10 ft side 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  
Jose Gamboa, 7805 Silverberry RD SW, 87121