



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

Stan Hatch requests a variance of 10 ft to the required 25 ft front yard setback for Lot 20, Block 5, Volcano Cliffs Unit 2, located at 7940 Victoria DR NW, zoned R-1D [Section 14-16-3-4(M)(3)(a)]

Special Exception No:..... **VA-2019-00252**
Project No: **Project#2019-002692**
Hearing Date: 09-17-19
Closing of Public Record: 09-17-19
Date of Decision: 10-02-19

On the 17th day of September, 2019, property owner Stan Hatch (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 10 ft to the required 25 ft front yard setback (“Application”) upon the real property located at 7940 Victoria DR 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 required 25 ft 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. Stan and Christi Hatch, property owners appeared and gave evidence in support of the application.
5. The address of the subject property is 7940 Victoria Dr. NW.
6. The subject property is currently zoned R-1D.

7. The subject property is within a **Character Protection Overlay Zone** Section 14-16-3-4(M): ***VOLCANO MESA – CPO – 12.***
8. The request is a variance from Subsection 3-4(M)(3): ***Setback Standards.***
9. The proposed project is construction of a new single family residence on the subject lot.
10. The request is for a variance of 10 feet from the 25 foot front yard setback required under setback standards of CPO-12.
11. All property owners within 100 feet of the subject property and the affected neighborhood association were notified.
12. Molten Rock Neighborhood Association and Westside Coalition of Neighborhood Associations are the affected neighborhood associations.
13. An e-mail from Mary Ann Wolf-Lyerla, on behalf of the Molten Rock Neighborhood Association, dated September 10, 2019, stating opposition to the Application on two grounds: “all existing home owners have successfully built their homes respecting the covenants; allowing this variance risks establishing a precedent for further requests”.
14. A site plan with accompanying photographs was submitted in support of the Application.
15. The subject lot has three consecutive rear-yard public easements which total 114 feet at the rear of the subject property.
16. There are 2 required 7 foot City Utility easement on the rear yard of the subject lot, plus 100 foot wide Plains Electric Utility easement, which contains high voltage regional transmission towers and lines.
17. There are no towers on the subject property, however the high energy lines are overhead in the easement area.
18. Applicant had prepared preliminary designs for the proposed residence which had complied with the existing development standards under the Old Building Code.
19. The enactment of the IDO imposed new standards and restrictions, which included the 5 foot required garage setback from the front façade of the building.
20. The 5 foot setback for a front garage from the front façade of the house, a new requirement under the IDO further materially limits reasonable construction on the lot.
21. The variance will allow Applicant to place the front façade of the garage 25 feet from the front property line.
22. The rear façade of the house will sit at the edge of the public utility easements.
23. In order for the garage to comply with a 5 feet setback from the front façade, the front façade of the house needs to be 5 feet into the front yard setback requirement, placing it at 20 feet rather than the required 25 feet.
24. The total amount of the building in the variance area is less than 75 sq. ft., with the remainder of the building within the 25 foot setback.
25. Applicant is choosing walled courtyard with an entry feature as their option for the way the house “addresses” the street.
26. The fence and entry feature will also need to be constructed 5 feet from the front façade and 15 feet from the front property line.
27. This will minimize the visual effect of the reduction in the 25 foot front yard setback requested.
28. The front of the house will still remain 35 feet from the front yard curb setback.
29. Applicant submitted an Affidavit from 10 property owners in the adjacent neighborhood, who have signed the Affidavit affirming that they have no opposition to the Application: [Adrian Martinez, 8016 Victoria Dr NW; Jesse & Amy Hatch, 8012 Victoria Dr NW; Miguel

- Rival, 8009 Victoria Dr. NW; Nick and Candace Foutz, 8004 Victoria Dr. NW; Steven & Jessica Simkins, 7944 Victoria Dr. NW; and Robert & Gloria Lovato, 7943 Victoria Dr. NW.
30. Applicant submitted an aerial photograph of the area, highlighted in blue are existing house which were constructed prior the IDO enactment, and all have no garage setbacks from the façade.
 31. A majority of the existing homes do not have a garage façade setback.
 32. Jill Yeagley, 7936 Victoria Dr. NW, appeared and gave evidence in opposition to the Application.
 33. She is the owner of adjacent property to the south of the subject lot.
 34. Her primary opposition to the request is the need to keep open space in the neighborhood.
 35. She pointed out that the Molten Rock Development was very controversial in the beginning, due to its proximity to the Petroglyph Park.
 36. She recalls that two of the premises that allowed the development to go forward, was commitment of the developers to larger lots and substantial open space requirements.
 37. She feels the Applicant's original proposed plan, without the garage faced setback requirement, allowed for more open space and she requested the City approve the Applicant's original plan.
 38. Applicant responded that the request is for 5 feet to meet the garage façade setback requirement is minimal and would have very little impact on adding additional open space.
 39. Applicant states the request is the minimum necessary to avoid extraordinary hardship or difficulties, and would allow the proposed project to comply with garage faced setback requirement imposed by the IDO standards set by the *VOLCANO MESA – CPO – 12*.
 40. The request is for a variance from the IDO, and is not a covenant of Molten Rock Development.
 41. Transportation has reported No Objection to the Application.
 42. 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).
 43. 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).
 44. 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).
 45. 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).
 46. 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).
 47. The proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
 48. The Applicant has authority to pursue this Application.

DECISION:

APPROVAL of a variance of 10 ft to the required 25 ft front yard setback.

APPEAL:

If you wish to appeal this decision, you must do so by October 17, 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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