



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

Brittany Love (Agent, Teresa King) requests a variance of 5 feet to the required 10 foot front yard setback for Lot 266-A, MRGCD Map 38, located at 2311 Hollywood Ave NW, zoned R-1A [Section 14-16-2-3(B)]

Special Exception No:..... **VA-2021-00054**  
Project No: ..... **Project#2021-005169**  
Hearing Date: ..... 04-20-21  
Closing of Public Record: ..... 04-20-21  
Date of Decision: ..... 05-05-21

On the 20th day of April, 2021, Teresa King, agent for property owner Brittany Love (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 5 feet to the required 10-foot front yard setback (“Application”) upon the real property located at 2311 Hollywood Ave NW (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 5 feet to the required 10-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. Applicant and Agent appeared and gave evidence in support of the application.
5. Agent provided evidence showing that all property owners within 100 feet of the subject property and the affected neighborhood association were notified. While some public

participants testified that they did not receive notice, they were aware of the ZHE hearing in this matter, at which they provided testimony at the public hearing. Agent also provided evidence that the proper “Notice of Hearing” signage was posted for the required time period as required by Section 14-16-6-4(K)(3). Based on the foregoing, the ZHE finds that notice was proper as required by the IDO.

6. Based on evidence submitted by or on behalf of Applicant, it appears that 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). Specifically, Applicant testified and provided written evidence that, the Subject Property is an extremely small lot in comparison to neighboring properties. Enforcement of the standard setback requirements essentially would render the lot unbuildable for the residential purposes for which it is zoned.
7. Based on evidence submitted by or on behalf of Applicant, 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). Specifically, evidence was submitted supporting that, if granted approval, the Applicant intends to develop the site as requested in the Application in a manner that is consistent with the IDO and the Development Process Manual (DPM). Numerous neighbors testified as to traffic problems along the very narrow Hollywood Avenue, which the Subject Property fronts. However, given that nearly all other properties along Hollywood Avenue are developed as residences, it cannot be shown how one additional residence can be said to be contrary to the public safety, health, and welfare of the community. Indeed, one of the key concerns of Applicant was to provide off-street parking in the form of a garage, to try to mitigate the congestion along Hollywood Avenue by getting parked cars off the street.
8. Based on evidence submitted by or on behalf of Applicant, 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). Agent testified that there would be no adverse impact on infrastructure improvements. See finding 7, above.
9. Based on evidence submitted by or on behalf of Applicant, 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). Specifically, Applicant presented evidence that the intent of IDO will still be met in that the subject site will continue the existing use and the proposed variance would merely allow for the usability of the site consistent with its residential zoning.
10. Based on evidence submitted by or on behalf of Applicant, 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). Specifically, Applicant submitted evidence that any smaller setback variance would be ineffective to provide for the safety and usability of the site and the intended residential use. Thus, the applicant is not requesting more than what is minimally necessary for a variance.
11. City Transportation submitted a report stating no objection.
12. The Applicant has authority to pursue this Application.

DECISION:

APPROVAL of a variance of 5 feet to the required 10-foot front yard setback.

APPEAL:

If you wish to appeal this decision, you must do so by May 20, 2021 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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Robert Lucero, Esq.  
Zoning Hearing Examiner

cc:

ZHE File  
Zoning Enforcement  
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NOTIFICATION OF DECISION

Brittany Love (Agent, Teresa King) requests a variance of 5 feet to the required 10 feet rear yard setback for Lot 266-A, MRGCD Map 38, located at 2311 Hollywood Ave NW, zoned R-1A [Section 14-16-2-3(B)]

Special Exception No:..... **VA-2021-00055**  
Project No: ..... **Project#2021-005169**  
Hearing Date: ..... 04-20-21  
Closing of Public Record: ..... 04-20-21  
Date of Decision: ..... 05-05-21

On the 20th day of April, 2021, Teresa King, agent for property owner Brittany Love (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 5 feet to the required 10 feet rear yard setback (“Application”) upon the real property located at 2311 Hollywood Ave NW (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 5 feet to the required 10-foot rear 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.*
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  - (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. Applicant and Agent appeared and gave evidence in support of the application.
5. Agent provided evidence showing that all property owners within 100 feet of the subject property and the affected neighborhood association were notified. While some public

participants testified that they did not receive notice, they were aware of the ZHE hearing in this matter, at which they provided testimony at the public hearing. Agent also provided evidence that the proper “Notice of Hearing” signage was posted for the required time period as required by Section 14-16-6-4(K)(3). Based on the foregoing, the ZHE finds that notice was proper as required by the IDO.

6. Based on evidence submitted by or on behalf of Applicant, it appears that 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). Specifically, Applicant testified and provided written evidence that, the Subject Property is an extremely small lot in comparison to neighboring properties. Enforcement of the standard setback requirements essentially would render the lot unbuildable for the residential purposes for which it is zoned.
7. Based on evidence submitted by or on behalf of Applicant, 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). Specifically, evidence was submitted supporting that, if granted approval, the Applicant intends to develop the site as requested in the Application in a manner that is consistent with the IDO and the Development Process Manual (DPM). Numerous neighbors testified as to traffic problems along the very narrow Hollywood Avenue, which the Subject Property fronts. However, given that nearly all other properties along Hollywood Avenue are developed as residences, it cannot be shown how one additional residence can be said to be contrary to the public safety, health, and welfare of the community. Indeed, one of the key concerns of Applicant was to provide off-street parking in the form of a garage, to try to mitigate the congestion along Hollywood Avenue by getting parked cars off the street.
8. Based on evidence submitted by or on behalf of Applicant, 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). Agent testified that there would be no adverse impact on infrastructure improvements. See finding 7, above.
9. Based on evidence submitted by or on behalf of Applicant, 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). Specifically, Applicant presented evidence that the intent of IDO will still be met in that the subject site will continue the existing use and the proposed variance would merely allow for the usability of the site consistent with its residential zoning.
10. Based on evidence submitted by or on behalf of Applicant, 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). Specifically, Applicant submitted evidence that any smaller setback variance would be ineffective to provide for the safety and usability of the site and the intended residential use. Thus, the applicant is not requesting more than what is minimally necessary for a variance.
11. City Transportation submitted a report stating no objection.
12. The Applicant has authority to pursue this Application.

DECISION:

APPROVAL of a variance of 5 feet to the required 10-foot rear yard setback.

APPEAL:

If you wish to appeal this decision, you must do so by May 20, 2021 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.

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