



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: ..... 11-16-21  
Closing of Public Record: ..... 11-16-21  
Date of Decision: ..... 12-01-21

On the 16th day of November, 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. This matter came before the ZHE on remand from the Albuquerque City Council Notice of Decision on AC-21-10, dated August 3, 2021 (the “Remand Decision”).
3. The Remand Decision directs the ZHE to:
  - a. Evaluate and make a finding as to whether or not the special circumstance proposed as justifying the variance applies generally to the other property in the same zone district and vicinity;
  - b. Require that a site plan be submitted as part of the request that depicts or identifies the proposed structure and its dimensions, setbacks, and building height; and
  - c. Evaluate the applicability or effect of the contextual standards of the IDO found in Section 14-16-5-1-C(2)(c)

This Notice of Decision will address these three directives in reverse order.

4. The contextual standards of the IDO found in Section 14-16-5-1-C(2)(c) states:

*Front Setbacks*

*In any Residential zone district in an Area of Consistency, the front setback for construction of new low-density residential development shall be based on the existing front setbacks of primary buildings on adjacent lots:*

1. *If both of the abutting lots facing the same street are low- density residential development, the front setback of any new dwellings shall be between the closer and farther front setbacks of the 2 primary dwellings on the abutting lots. (See illustration below).*
2. *If only 1 of the abutting lots facing the same street is a low- density residential development, the front setback of any new dwellings shall be within 3 feet of the front setback of the existing primary dwelling on the abutting lot or within the*

*front setback required by Table 5-1-1, whichever allows the new buildings to be closer to the street.*

3. *If both of the abutting lots are vacant, but at least 2 adjacent lots facing the same street are low-density residential development, the front setback of any new dwellings shall be between the closer and farther front setbacks of the 2 primary dwellings on adjacent lots or within the front setback required by Table 5-1-1, whichever allows the new buildings to be closer to the street.*
4. *If both of the abutting lots are vacant, but only 1 adjacent lot facing the same street is low-density residential development, the front setback of any new dwellings shall be constructed pursuant to the standards in Table 5-1-1.*
5. The subject Property is currently zoned R-1A and is located in an Area of Consistency
6. The contextual standards in Section 14-16-5-1-C(2)(c)(1) apply to the Subject Property, because both of the abutting lots facing the same street are low-density residential development. Therefore, as required by Section 14-16-5-1-C(2)(c)(1) the front setback of any new dwellings shall be between the closer and farther front setbacks of the 2 primary dwellings on the abutting lots.
7. Based on evidence and testimony submitted by Applicant, the closer front setback is located on the adjacent property to the west of the Subject Property and is measured 6 feet, while the farther front setback is located on the adjacent property to the east of the Subject Property and is measured 10 feet 2 inches. Therefore, the front setback of the Subject Property must be no less than 6 feet.
8. Applicant submitted a site plan as required by the Remand Decision, except that the front yard setback was shown as 5 feet. The ZHE and Agent discussed at the hearing that, as stated above, the front setback on the Subject Site could be no less than 6 feet, and the ZHE considers the site plan revised accordingly.
9. 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.*"
10. The applicant bears the burden of providing a sound justification for the requested decision, based on substantial evidence, pursuant to IDO Section 14-16-6-4(E)(3).

11. The applicant bears the burden of showing compliance with required standards through analysis, illustrations, or other exhibits as necessary, pursuant to IDO Section 14-16-6-4(E)(4).
12. Agent for Applicant appeared and gave evidence in support of the application.
13. All property owners within 100 feet of the subject property and the affected neighborhood association were notified.
14. 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 has special circumstances because of the unusual size and shape of the lot, as well as the location of existing structures on neighboring lots having a zero-lot-line or located very close to the Subject Property. These special circumstances create an extraordinary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the Subject Property, because compliance with the minimum standards would make it impossible to locate the reasonably proposed structure anywhere else on the lot. Although other lots similarly do not run deep back from the street, it appears that no other lot has the same combination of shallow depth, width, and adjacent neighbors with zero-lot-line or closely located structures.
15. 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). Evidence was submitted supporting that, if granted approval, the Applicant intends to construct the structure in a manner that is consistent with the IDO and the Development Process Manual (DPM). Although opponents raised concerns regarding traffic and congestion in earlier ZHE hearings, no neighbors have appeared since the Notice of Remand to voice any new concerns. Applicant submitted evidence that the proposed development of the Subject Property would actually improve traffic and reduce congestion by providing off-street parking in the proposed garage to be constructed on the Subject Property.
16. 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). Specifically, the proposed structure is designed to be in harmony and consistency with what currently exists in the neighborhood, would have a positive effect on parking and congestion, and would provide for a residential use consistent with the IDO and surrounding uses.
17. 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 proposed variance would merely add to the safety and usability of the site.
18. 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 variance would be ineffective to provide for the privacy, safety and usability of the site,

because the dimensions of the proposed residence would be impractical with any smaller variance. Thus, the applicant is not requesting more than what is minimally necessary for a variance.

19. City Transportation submitted a report stating no objection.
20. The proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
21. The Applicant has authority to pursue this Application.

DECISION:

APPROVAL of a variance of 4 feet to the required 10-foot front yard setback.

APPEAL:

If you wish to appeal this decision, you must do so by December 16, 2021 pursuant to Section 14-16-6-4(V), 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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