



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

Douglas Lopez (Agent, Douglas Jones) requests a variance of 7 feet to the required 10 foot side yard setback for Lot 2, Block 7, Granada Heights Add, located at 3808 Lead AVE SE, zoned R-1D [Section 14-16-5-1(C)]

Special Exception No: **VA-2023-00107**
Project No: **Project#2023-008510**
Hearing Date: 06-20-23
Closing of Public Record: 06-20-23
Date of Decision: 07-05-23

On the 20th day of June, 2023, Douglas Jones, agent for property owner Douglas Lopez (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 7 feet to the required 10 foot side yard setback (“Application”) upon the real property located at 3808 Lead AVE SE (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 7 feet to the required 10 foot side yard setback.
2. The City of Albuquerque Integrated Development Ordinance, Section 14-16-6-6(O)(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 this IDO, the applicable zone district, or any applicable Overlay Zone.*
 - (5) *The Variance approved is the minimum necessary to avoid extraordinary hardship or practical difficulties.*”
3. 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).
4. 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).
5. Agent and Applicant appeared at the ZHE hearing on this matter and gave evidence in support of the Application.

6. Applicant established that the proper "Notice of Hearing" signage was posted for the required time period.
7. Applicant established that all property owners and neighborhood association entitled to notice were notified of the Application.
8. Applicant has authority to pursue this Application.
9. The City Traffic Engineer submitted a report stating no objection to the Application.
10. The subject property is currently zoned R-1D.
11. Applicant failed to establish that the variance requested is the minimum necessary to avoid extraordinary hardship or practical difficulties as required by Section 14-16-6-6(O)(3)(a)(5). Agent testified that the proposed porches could be built in a different configuration, with even more protrusion towards the street in locations outside the setback area, to which the Agent responded in the affirmative. It therefore appears that the proposed project could still be constructed without a variance, albeit in a different configuration.
12. It appears to the ZHE that the Applicant and Agent attempted to design improvements in a manner intended to be sensitive to the neighborhood and community by being less obstructive of neighbors' views, but which would require a variance. While such civic-minded intent is laudable, it appears that not all neighbors saw it this way. Unfortunately for neighbors who did not want the improvements to obstruct neighbor's views, Applicant may construct more view-obstructive improvements without a variance than what Applicant proposed in the Application. In any event, the ZHE must uphold the requirements for a variance, which were not satisfied here.
13. Because all prongs of the variance test must be satisfied and, as stated above, Applicant failed to satisfy Section 14-16-6-6(O)(3)(a)(5), the Application must be denied. Out of consideration for administrative and quasi-judicial economy, the ZHE will not summarize any analysis of the remaining prongs of the variance test in this Notification of Decision.

DECISION:

DENIAL of a variance of 7 feet to the required 10 foot side yard setback.

APPEAL:

If you wish to appeal this decision, you must do so by July 20, 2023 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.



Robert Lucero, Esq.
Zoning Hearing Examiner

cc:

ZHE File
Zoning Enforcement
Douglas Jones adornabode11@gmail.com



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

Douglas Lopez (Agent, Douglas Jones) requests a variance of 5 feet & 10 inches to the required 20 foot front yard setback for Lot 2, Block 7, Granada Heights Add, located at 3808 Lead AVE SE, zoned R-1D [Section 14-16-5-1(C)]

Special Exception No: **VA-2023-00108**
Project No: **Project#2023-008510**
Hearing Date: 06-20-23
Closing of Public Record: 06-20-23
Date of Decision: 07-05-23

On the 20th day of June, 2023, Douglas Jones, agent for property owner Douglas Lopez (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 5 feet & 10 inches to the required 20 foot front yard setback (“Application”) upon the real property located at 3808 Lead AVE SE (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 5 feet & 10 inches to the required 20 foot front yard setback.
2. The City of Albuquerque Integrated Development Ordinance, Section 14-16-6-6(O)(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 this IDO, the applicable zone district, or any applicable Overlay Zone.*
 - (5) *The Variance approved is the minimum necessary to avoid extraordinary hardship or practical difficulties.”*
3. 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).
4. 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).

5. Agent and Applicant appeared at the ZHE hearing on this matter and gave evidence in support of the Application.
6. Applicant established that the proper "Notice of Hearing" signage was posted for the required time period.
7. Applicant established that all property owners and neighborhood association entitled to notice were notified of the Application.
8. Applicant has authority to pursue this Application.
9. The City Traffic Engineer submitted a report stating no objection to the Application.
10. The subject property is currently zoned R-1D.
11. Applicant failed to establish that the variance requested is the minimum necessary to avoid extraordinary hardship or practical difficulties as required by Section 14-16-6-6(O)(3)(a)(5). Agent testified that the proposed porches could be built in a different configuration, with even more protrusion towards the street in locations outside the setback area, to which the Agent responded in the affirmative. It therefore appears that the proposed project could still be constructed without a variance, albeit in a different configuration.
12. It appears to the ZHE that the Applicant and Agent attempted to design improvements in a manner intended to be sensitive to the neighborhood and community by being less obstructive of neighbors' views, but which would require a variance. While such civic-minded intent is laudable, it appears that not all neighbors saw it this way. Unfortunately for neighbors who did not want the improvements to obstruct neighbor's views, Applicant may construct more view-obstructive improvements without a variance than what Applicant proposed in the Application. In any event, the ZHE must uphold the requirements for a variance, which were not satisfied here.
13. Because all prongs of the variance test must be satisfied and, as stated above, Applicant failed to satisfy Section 14-16-6-6(O)(3)(a)(5), the Application must be denied. Out of consideration for administrative and quasi-judicial economy, the ZHE will not summarize any analysis of the remaining prongs of the variance test in this Notification of Decision.

DECISION:

DENIAL of a variance of 5 feet & 10 inches to the required 20 foot front yard setback.

APPEAL:

If you wish to appeal this decision, you must do so by July 20, 2023 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.



Robert Lucero, Esq.
Zoning Hearing Examiner

cc:

ZHE File
Zoning Enforcement
Douglas Jones adornabode11@gmail.com