



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

James Sullivan requests a 3 foot to the required 3-foot distance from a property line for a shade structure for Lot 5-P1, Block 4, Mesa Del Norte Unit 2, located at 7748 Calle Comodo NE, Zone R-1B 14-16-5-1(G) Table 5-1- 4	Special Exception No:	VA-2024-00114
	Project No:	PR-2024-010248
	Hearing Date:	6-18-24
	Closing of Public Record:	6-18-24
	Date of Decision:	7-03-24

On the 18th day of June, 2024, property owner James Sullivan (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 3 foot to the required 3-foot distance from a property line for a shade structure (“Application”) upon the real property located at 7748 Calle Comodo NE (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 3 foot to the required 3-foot distance from a property line for a shade structure.
2. The ZHE finds that the Applicant has authority to pursue this Application.
3. All property owners within 100 feet and affected neighborhood association(s) were notified.
4. The ZHE finds that the proper “Notice of Hearing” signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
5. The City of Albuquerque Integrated Development Ordinance (“IDO”), 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 a single lot that are not self-imposed and that do not apply generally to other property in the same zone district and vicinity, including but not limited to size, shape, topography, location, surroundings, physical characteristics, natural forces, or by government actions for which no compensation was paid. Such special circumstances of the lot either create an extraordinary hardship in the form of a substantial and unjustified limitation on the reasonable use or economic 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.”* 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).

6. 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).
7. Applicant/agent appeared and gave evidence in support of the application.
8. The subject property is currently zoned R-1B.
9. 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), including the dimensions of the lot and of the existing structures on the lot in relation to existing public rights of way and infrastructure. These special circumstances make it such that the only reasonable location for the improvement is as stated in the Application.
10. 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, Applicant established that the proposed variance is merely to allow existing setbacks to be maintained.
11. 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, Applicant testified that no such adverse impacts would occur.
12. 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 established that, if granted the variance, the Subject Property would be developed in accordance with IDO procedures.
13. Based on evidence submitted by or on behalf of Applicant, the requested variance is the minimum necessary to avoid extraordinary hardship or practical difficulties as required by Section 14-16-6-6(N)(3)(a)(5). Applicant testified that any smaller setback would involve impractical demolition of existing structures.
14. The City Traffic Engineer submitted a report stating no objection to the Application.

DECISION:

APPROVAL of a variance of 3 foot to the required 3-foot distance from a property line for a shade structure.

APPEAL:

If you wish to appeal this decision, you must do so by July 18, 2024 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.

A handwritten signature in black ink, appearing to read "Robert Lucero", is centered on the page. The signature is written in a cursive, flowing style.

Robert Lucero, Esq.
Zoning Hearing Examiner

cc:

ZHE File
Zoning Enforcement
James Sullivan and Phoenix Leon, jasullivan@cabq.gov