



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

Jesus Anguiano Mendoza & Trinidad Palma Anguiano (Agent Ivan Ortiz) requests a Variance of 12ft to the required 15ft rear setback for Lot 3-P1, Block 19, Parkwest Unit 4, located at 8015 Cliffview Ave NW, Zone R-1B, 14-16-5-1 Table 5-1-1	Special Exception No: .... Project No: ..... Hearing Date: ..... Closing of Public Record: Date of Decision: .....	<b>VA-2024-00150</b> <b>PR-2024-010379</b> 6-18-24 6-18-24 7-03-24
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On the 18th day of June, 2024, Jesus Anguiano Mendoza & Trinidad Palma Anguiano (Agent Ivan Ortiz) (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 12ft to the required 15ft rear setback (“Application”) upon the real property located at 8015 Cliffview Ave NW (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 12ft to the required 15ft rear setback.
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.*”
6. 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).
7. 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).
8. Applicant/agent appeared and gave evidence in support of the application.
9. The subject property is currently zoned R-1B.
10. In or around 2006, a patio was approved by the City and built on the Subject Property. Later, the patio was enclosed with windows and doors. Applicant seeks the requested variance to maintain the existing structure, which is not in compliance with setbacks for an enclosed structure. Applicant does not propose any increase to square footage or any new structure.
11. Certain neighbors expressed opposition to the proposal:
  - a. One neighbor expressed objection to a casita. No casita of accessor dwelling is proposed in the Application.
  - b. Another neighbor expressed objection that the proposed structure would “loom” over their adjacent property. However, based on evidence in the record, Applicant’s patio was duly approved and constructed. All that is in question now is whether the doors and windows enclosing the patio should be allowed to remain. It is unclear how removing the doors and windows would improve the situation regarding which this neighbor objects, given that the patio structure would still remain, as it has since about 2006. Further, the photos submitted by this objecting neighbor do not indicate that any structure is unreasonably higher than the tall cinder block wall between the two properties.
  - c. A third neighbor complained of unsightly “junk” and cars parking illegally at the Subject Property. These concerns, however valid, do not concern the requested variance. Nevertheless, Applicant submitted into the record correspondence with this neighbor committing to clean up the property and park legally.
12. 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 proposed addition is as stated in the Application.
13. 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 construction in a reasonable area.
14. 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. Although a neighbor complained of potential blocking of sunlight, it appears from the evidence that denying the variance would not improve sunlight access.

15. 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.
16. 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 enclosures to the patio structure that would nonetheless remain.
17. The City Traffic Engineer submitted a report stating no objection to the Application.

DECISION:

APPROVAL of a variance of 12ft to the required 15ft rear setback.

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.



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Robert Lucero, Esq.  
Zoning Hearing Examiner

cc:

ZHE File  
Zoning Enforcement  
Ivan Ortiz, gortiz46ivan@gmail.com  
John King, 8008 Cliffview Ave, Abq, NM 87120