



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

Kevin Evans, AGENT for, Joseph Matarese, Sarah Bernhard, requests a Variance of 5 ft to 10 ft side yard setback for Lot 24, Block 38, University Heights Addition, located at 301 Bryn Mawr Dr SE, zoned R-1C

Special Exception No: **VA-2025-00138**
Project No: **PR-2025-020105**
Hearing Date: 10-21-25
Closing of Public Record: 10-21-25
Date of Decision: 11-05-25

On October 21, 2025, Kevin Evans, (“AGENT”) appeared before the Zoning Hearing Examiner (the “ZHE”) requesting a Variance of 5 ft to 10 ft side yard setback (“Application”) upon the real property located at 301 Bryn Mawr Dr. SE (the “Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a Variance of 5 feet to the minimum 10-foot side setback, pursuant to City of Albuquerque Code of Ordinances Integrated Development Ordinance (“IDO”) Section 14-16-6-6(O).
2. Applicant has authority to pursue this Application, pursuant to 14-16-6-4(D).
3. Applicant has duly authorized Agent to act on Applicant’s behalf regarding the Application.
4. Applicant is not required to offer a meeting to Indian Nations, Tribes, and Pueblos before filing the application, pursuant to IDO Section 14-16-6-4(B).
5. The Planning Director’s delegee has determined that the Application is complete, pursuant to IDO Section 14-16-6-4(G).
6. The analyses and studies listed in IDO Section 14-16-6-4(H) are not required.
7. The Application was not required to be forwarded to commenting agencies pursuant to IDO Section 14-16-6-4(I).
8. The content of the notice of the Application satisfies IDO Section 14-16-6-4(J)(1).
9. Applicant has sent an electronic mail notice to the email addresses on file with the Office of Neighborhood Coordination for each pertinent Neighborhood Association as required by IDO Section 14-16-6-4(J)(2).
10. Applicant has sent mailed notice to all property owners within 100 feet of the subject property as required by IDO Section 14-16-6-4(J)(3).
11. Applicant has posted sign notice(s) as required by IDO Section 14-16-6-4(J)(4).
12. The Subject Property is located in the University Heights Addition and is zoned R-1.
13. Therefore, a 5ft side variance for construction above the existing building on the Subject Property requires a Variance Approval pursuant to IDO Subsection 14-16-6-6(O).

14. IDO Section 14-16-6-6(O)(3)(a) (Review and Decision Criteria– Variance) 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.*
15. 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(O)(3)(a)(1). The Subject Property was created by historic platting, with preexisting structures encroaching into the IDO setback and predating the IDO. The variance is requested to allow the existing setback to persist, with any addition not to exceed the existing setback. Consequently, practical difficulties exist with strict compliance with the IDO setback requirements.
16. 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(O)(3)(a)(2). Evidence establishes that the proposed variance would be in line with historic development in the area and would have no negative impact on neighbors or the community.
17. 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(O)(3)(a)(3). Evidence submitted by Applicant establishes that no negative impacts would occur.
18. 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(O)(3)(a)(4). If approved, Applicant intends to develop and use the Subject Property in line with all applicable IDO requirements.
19. 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(O)(3)(a)(5). Any smaller variance would be impractical.
20. The City Traffic Engineer submitted a report stating no objection to the Application.

DECISION:

APPROVAL of a Variance of 5 ft to 10 ft side yard setback.

APPEAL:

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 Notice of Decision does not constitute approval of plans for a building permit. If your Application is approved, bring this Notice of Decision with you when you apply for any related building permit or occupation tax number. Approval of a Conditional Use is void after two (2) years from date of approval if the rights and privileges granted thereby have not been executed or utilized. Approval of a Variance is void after one (1) year from date of approval if the rights and privileges granted thereby have not been executed or utilized.

A handwritten signature in blue ink, appearing to read "Robert Lucero".

Robert Lucero, Esq.
Zoning Hearing Examiner

cc: Kevin Evans, kevin@annexgeneralcontracting.com
Sarah Bernhard, sarahbernhard@outlook.com
ZHE File
Zoning Enforcement