

CITY OF ALBUQUERQUE
PLANNING DEPARTMENT
URBAN DESIGN & DEVELOPMENT DIVISION
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ZONING HEARING EXAMINER NOTICE OF DECISION

Special Exception Number: VA-2026-00099

Project Number: PR-2026-000134

Hearing Date: 08-18-26

Closing of Public Record: 08-18-26

Date of Decision: 09-02-26

Case Description: Janice Paster (Owner) & Delilah Belmonte (Applicant) request a Variance of 22-feet to the 45-foot Major Public Open Space landscape buffer for an in-ground swimming pool for Lot 26-P2, Block 0000, Tierra Viva, located at 5901 Tierra Viva Pl NW, zoned R-1 (F-14) [IDO § 14-16-5-2(J)(2)(a)(1)]

On August 18, 2026, Delilah Belmonte (“Applicant”) and Janice Paster (“Owner”) were scheduled to appear before the Zoning Hearing Examiner (“ZHE”) requesting a Variance of 22-feet to the 45-foot Major Public Open Space landscape buffer for an in-ground swimming pool (“Application”) upon the real property located at 5901 Viva Place NW (“Subject Property”). Below are the ZHE’s findings of fact and decision.

FINDINGS, VARIANCE TO MINIMUM WALL/FENCE SETBACK:

1. Applicant is requesting a Variance of 22-feet to the 45-foot Major Public Open Space landscape buffer for an in-ground swimming pool to be built on the property, pursuant to City of Albuquerque Code of Ordinances Integrated Development Ordinance (“IDO”) § 14-16-6-6(O).
2. Applicant has authority to pursue this Application, pursuant to IDO § 14-16-6-4(D).
3. Applicant has not duly authorized Agent to act on Applicant’s behalf regarding the Application.
4. Applicant is not required to offer at least 1 meeting to Indian Nations, Tribes, and Pueblos no more than 1 calendar year before filing the application, pursuant to IDO § 14-16-6-4(B).
5. The Planning Director’s delegee has determined that the Application is complete, pursuant to IDO § 14-16-6-4(G).

6. The analyses and studies listed in IDO § 14-16-6-4(H) are not required.
7. The Application was referred to commenting agencies pursuant to IDO § 14-16-6-4(I).
8. The content of the notice of the Application satisfies IDO § 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 Neighborhood Associations within 660 feet as required by IDO § 14-16-6-4(J)(2).
10. Applicant has mailed notice to all property owners within 100 feet of the subject property as required by IDO § 14-16-6-4(J)(3).
11. Applicant has posted sign notice(s) as required by IDO § 14-16-6-4(J)(4).
12. The Subject Property is in the R-1 zone district adjacent to Major Public Open Space, which requires a landscape buffer of 45 feet.
13. The applicant wishes to construct a swimming pool within the 45-foot landscape buffer pursuant to IDO Table 14-16-5-2(J)(2)(a)(1).
14. Therefore, a Variance of 22-feet to the 45-foot Major Public Open Space landscape buffer for an in-ground swimming pool on the property requires a Variance – ZHE pursuant to IDO § 14-16-6-6(O).
15. IDO § 14-16-6-6(O)(3)(a) (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.”*
16. Applicant bears the burden of providing a sound justification for the requested decision, based on substantial evidence, pursuant to IDO § 14-16-6-4(E)(3).
17. Applicant bears the burden of showing compliance with required standards through analysis, illustrations, or other exhibits as necessary, pursuant to IDO § 14-16-6-4(E)(4).
18. 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, and 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, as required by Section 14-16-6-6(O)(3)(a)(1). The pre-existing conditions of the Subject Property create special circumstances under which practical difficulties result from strict compliance with the minimum standards.

19. 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). No safety, health or welfare concerns are implicated in the record without sufficient mitigation.
20. 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). The variance requested does not impose upon neighboring properties.
21. 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). The development of the property is consistent with the IDO and the Application merely seeks to rectify a variance situation.
22. 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). Applicant requests only the minimum required to accommodate the development of the Subject Property.

DECISION:

APPROVAL of a Variance of 22-feet to the 45-foot Major Public Open Space landscape buffer for an in-ground swimming pool on the property for Lot 26-P2, Block 0000, Tierra Viva, 0.3137 AC, located at 5901 Tierra Viva Place NW.

APPEAL:

If you wish to appeal this decision, you must do so by September 17, 2026. Pursuant to IDO § 14-16-6-4-(U), you must demonstrate that you have legal standing to file an appeal.

PERIOD OF VALIDITY:

Approval of a Variance is valid for one (1) year from date of approval.

OTHER REQUIREMENTS:

THIS NOTICE OF DECISION DOES NOT CONSTITUTE APPROVAL OF PLANS FOR A BUILDING PERMIT.

Successful applicants are reminded that other regulations of the City must be complied with, even after approval of a special exception is secured. If your Application is approved, submit this Notice of Decision when you apply for any related building permit or other necessary permit.

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

Robert Lucero, Esq.
Zoning Hearing Examiner

cc: ("Owner") Janice Paster, senjan@swcp.com
("Applicant") Andres Gurule, Construct Pro LLC., delilah.propermits@gmail.com
ZHE File
Zoning Enforcement