



Mayor Timothy M. Keller

CITY OF ALBUQUERQUE

Albuquerque, New Mexico

Planning Department

INTER-OFFICE MEMORANDUM

July 5, 2023

TO: Pat Davis, President, City Council

FROM: Alan Varela, Planning Director 
Alan Varela (Jul 5, 2023 08:11 MDT)

SUBJECT: AC-23-11, PR-2023-008334–VA-2023-00060-VA-2023-00131:

Diana Hunt, Alvarado Gardens Neighborhood Association, appeals the Zoning Hearing Examiner's decision to Approve a Variance of 13 feet to the 25-foot rear setback in an R-A zone for Lot 90B, Alvarado Gardens Unit 3, located at 2733 Candelaria RD NW, zoned R-A [Subsection 14-16-5-1(C)]

OVERVIEW

On the 18th day of April, 2023, property owners Emma & Roy Luna appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 13 feet to the 25-foot rear setback in an R-A zone on the real property located at 2733 Candelaria Rd. NW.

The ZHE approved the request on May 03, 2023, based upon his determination that the requirements of IDO Subsection 14-16-6-6(O)(3)(a) were satisfied. The approval is elaborated in the official Notification of Decision, including 16 findings in support of the decision.

The Appellant timely filed an appeal of the ZHE’s decision prior to the appeal deadline of May 18, 2023. Appellant is a representative of the Alvarado Gardens Neighborhood Association and has standing under IDO Subsection 14-16-6-4(V)(2)(a)5.

BASIS FOR APPEAL

IDO Subsection 14-16-6-4(V)(4) outlines the applicable criteria for the appeal in determining whether the ZHE erred in its decision:

6-4(V)(4) Criteria for Decision

The criteria for review of an appeal shall be whether the decision-making body or the prior appeal body made 1 of the following mistakes:

6-4(V)(4)(a) The decision-making body or the prior appeal body acted fraudulently, arbitrarily, or capriciously.

6-4(V)(4)(b) The decision being appealed is not supported by substantial evidence.

6-4(V)(4)(c) The decision-making body or the prior appeal body erred in applying the requirements of this IDO (or a plan, policy, or regulation referenced in the review and decision-making criteria for the type of decision being appealed).

STAFF RESPONSE

The reasons for the appeal, excerpted from Appellant's letter, are listed in quotes below, followed by the ZHE's findings. Please see the Appellant's letter and submittal packet for additional details.

“There are no special circumstances applicable to this single lot which do not apply generally to other property...”

- *Finding # 11. 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). Specifically, Applicant confirmed in oral testimony and submitted evidence that, the Subject Property's location and articulation as the only corner lot subdivided by the pertinent historic pre-IDO platting, create special circumstances. These special circumstances create an extraordinary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the Subject Property, because compliance with the minimum standards would not allow for the reasonably proposed use, which otherwise would be in compliance with the IDO.*

“The neighborhood believes that granting of the Variance would in fact materially undermine the intent and purpose of the IDO.”

- *Finding # 14. 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). Specifically, Applicant confirmed in written submittals that the intent of IDO will still be met in that the subject site will be in harmony with existing uses and the proposed variance would merely add to the safety and usability of the site.*

“The Variance requested is not the minimum necessary to avoid extraordinary hardship.”

- *Finding # 15. 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). Specifically, Applicant submitted evidence that any smaller variance would be ineffective to provide for the usability of the site. Thus, the applicant is not requesting more than what is minimally necessary for a variance.*

/ Lorena Patten-Quintana /

Lorena Patten-Quintana, ZHE Planner






AC-23-11 Memo - MRW

Final Audit Report

2023-07-05

Created:	2023-07-05
By:	Lucinda Montoya (lucindamontoya@cabq.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAkwnMyRU-6jjC8a1nS21bmWcvj85WsMFQ

"AC-23-11 Memo - MRW" History

-  Document created by Lucinda Montoya (lucindamontoya@cabq.gov)
2023-07-05 - 1:49:33 PM GMT
-  Document emailed to Alan Varela (avarela@cabq.gov) for signature
2023-07-05 - 1:49:57 PM GMT
-  Email viewed by Alan Varela (avarela@cabq.gov)
2023-07-05 - 2:11:11 PM GMT
-  Document e-signed by Alan Varela (avarela@cabq.gov)
Signature Date: 2023-07-05 - 2:11:23 PM GMT - Time Source: server
-  Agreement completed.
2023-07-05 - 2:11:23 PM GMT