

CITY OF ALBUQUERQUE



Planning Department
David Campbell, Director

Development Review Division

600 2nd Street NW – 3rd Floor
Albuquerque, NM 87102

NOTICE OF APPEAL

October 19, 2018

TO WHOM IT MAY CONCERN:

The Planning Department received an appeal on October 18, 2018. You will receive a Notice of Hearing as to when the appeal will be heard by the **Land Use Hearing Officer**. If you have any questions regarding the appeal please contact Alfredo Salas, Planning Administrative Assistant at (505) 924-3370.

Please refer to the enclosed excerpt from the City Council Rules of Procedure for Land Use Hearing Officer Rules of Procedure and Qualifications for any questions you may have regarding the Land Use Hearing Officer rules of procedure.

Any questions you might have regarding Land Use Hearing Officer policy or procedures that are not answered in the enclosed rules can be answered by Crystal Ortega, Clerk to the Council, (505) 768-3100.

CITY COUNCIL APPEAL NUMBER: AC-18-17

PLANNING DEPARTMENT CASE FILE NUMBER: PR-2018-001293

VA-2018-00031

PO Box 1293

Albuquerque

NM 87103

**APPLICANT: David Vilar,
12804 Piru Blvd.
Albuquerque NM, 87123**

www.cabq.gov

cc: Crystal Ortega, City Council, City county bldg. 9th floor
Kevin Morrow/Legal Department, City Hall, 4th Floor-
Zoning Enforcement
ZHE File
David Vilar, 12804 Piru Blvd, 87123
Mike Davidson, 12800 Piru Blvd SE, 87123
Ilena Estrella, 12928 Marva Place SE, 87123
Wanda Umber, 12520 Piru SE, 87123
Martina Mesmer, 511 Eugene CT SE, 87123
Judy Young, 13309 Rachel Rd SE, 87123
Don L. Hanosh, 12812 Piru SE, 87123
John McBrayer, Ph.D., 12720 Piru SE, 87123
Gary Hays, 12724 Piru SE, 87123



Please check the appropriate box and refer to supplemental forms for submittal requirements. All fees must be paid at the time of application.

Administrative Decisions	<input type="checkbox"/> Historic Certificate of Appropriateness – Major (Form L)	<input type="checkbox"/> Wireless Telecommunications Facility Waiver (Form W2)
<input type="checkbox"/> Archaeological Certificate (Form P3)	<input type="checkbox"/> Historic Design Standards and Guidelines (Form L)	Policy Decisions
<input type="checkbox"/> Historic Certificate of Appropriateness – Minor (Form L)	<input type="checkbox"/> Master Development Plan (Form P1)	<input type="checkbox"/> Adoption or Amendment of Comprehensive Plan or Facility Plan (Form Z)
<input type="checkbox"/> Alternative Signage Plan (Form P3)	<input type="checkbox"/> Site Plan – EPC including any Variances – EPC (Form P1)	<input type="checkbox"/> Adoption or Amendment of Historic Designation (Form L)
<input type="checkbox"/> WTF Approval (Form W1)	<input type="checkbox"/> Site Plan – DRB (Form P2)	<input type="checkbox"/> Amendment of IDO Text (Form Z)
<input type="checkbox"/> Minor Amendment to Site Plan (Form P3)	<input type="checkbox"/> Subdivision of Land – Minor (Form S2)	<input type="checkbox"/> Annexation of Land (Form Z)
Decisions Requiring a Public Meeting or Hearing	<input type="checkbox"/> Subdivision of Land – Major (Form S1)	<input type="checkbox"/> Amendment to Zoning Map – EPC (Form Z)
<input type="checkbox"/> Conditional Use Approval (Form ZHE)	<input type="checkbox"/> Vacation of Easement or Right-of-way (Form V)	<input type="checkbox"/> Amendment to Zoning Map – Council (Form Z)
<input type="checkbox"/> Demolition Outside of HPO (Form L)	<input type="checkbox"/> Variance – DRB (Form V)	Appeals
<input type="checkbox"/> Expansion of Nonconforming Use or Structure (Form ZHE)	<input checked="" type="checkbox"/> Variance – ZHE (Form ZHE)	<input type="checkbox"/> Decision by EPC, LC, DRB, ZHE, or City Staff (Form A)

APPLICATION INFORMATION

Applicant: <u>David Vilar</u>		Phone: <u>505-412-9175</u>
Address: <u>12804 Peru Blvd SE</u>		Email: <u>vilar4@yahoo.com</u>
City: <u>Albuquerque</u>	State: <u>NM</u>	Zip: <u>87123</u>
Professional/Agent (if any):		Phone:
Address:		Email:
City:	State:	Zip:
Proprietary Interest in Site:		List <u>all</u> owners:

BRIEF DESCRIPTION OF REQUEST

Appeal for a Variance of 10ft to the required 10ft side yard setback

SITE INFORMATION (Accuracy of the existing legal description is crucial! Attach a separate sheet if necessary.)

Lot or Tract No.: <u>8</u>	Block:	Unit:
Subdivision/Addition: <u>Tijeras Hglt</u>	MRGCD Map No.:	UPC Code:
Zone Atlas Page(s): <u>B-10</u>	Existing Zoning: <u>B-10</u>	Proposed Zoning:
# of Existing Lots:	# of Proposed Lots:	Total Area of Site (acres):

LOCATION OF PROPERTY BY STREETS

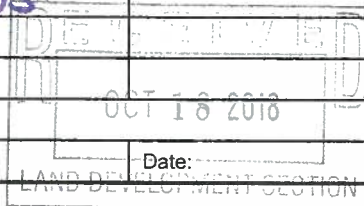
Site Address/Street: <u>Peru Blvd</u>	Between: <u>Parade</u>	and:
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CASE HISTORY (List any current or prior project and case number(s) that may be relevant to your request.)

Signature: <u>[Signature]</u>	Date: <u>10-18-18</u>
Printed Name: <u>David Vilar</u>	<input checked="" type="checkbox"/> Applicant or <input type="checkbox"/> Agent

FOR OFFICIAL USE ONLY

Case Numbers	Action	Fees
<u>VA-2018-00165</u>		
Meeting/Hearing Date:	Date: <u>OCT 18 2018</u>	Fee Total:
Staff Signature:	Date:	Project # <u>PR-2018-001293</u>



\$130

FORM A: Appeals

Complete applications for appeals will only be accepted within 15 consecutive days, excluding holidays, after the decision being appealed was made.

A single PDF file of the complete application including all plans and documents being submitted must be emailed to PLNDRS@cabq.gov prior to making a submittal. Zipped files or those over 9 MB cannot be delivered via email, in which case the PDF must be provided on a CD.

- ☐ APPEAL OF A DECISION OF CITY PLANNING STAFF (HISTORIC PRESERVATION PLANNER) ON A HISTORIC CERTIFICATE OF APPROPRIATENESS – MINOR TO THE LANDMARKS COMMISSION (LC)
- ☐ APPEAL OF A DECISION OF CITY PLANNING STAFF ON AN IMPACT FEE ASSESSMENT TO THE ENVIRONMENTAL PLANNING COMMISSION (EPC)
- ☒ APPEAL TO CITY COUNCIL THROUGH THE LAND USE HEARING OFFICER (LUHO)

- ☒ Interpreter Needed for Hearing? ____ if yes, indicate language: _____
- ☒ Project number of the case being appealed, if applicable: VA-2018-001293
- ☒ Application number of the case being appealed, if applicable: VA-2018-00031
- ☒ Type of decision being appealed: Variance 10' to the 10' setback
- ☒ Reason for the appeal identifying the section of the IDO, other City regulation, or condition attached to a decision that has not been interpreted or applied correctly, and further addressing the criteria in IDO Section 14-16-6-4(U)(4)
- ☒ Appellant's basis of standing in accordance with IDO Section 14-16-6-4(U)(2)
- ☒ Letter of authorization from the appellant if appeal is submitted by an agent
- ☒ Copy of the Official Notice of Decision regarding the matter being appealed

I, the applicant or agent, acknowledge that if any required information is not submitted with this application, the application will not be scheduled for a public meeting or hearing, if required, or otherwise processed until it is complete.

Signature: David Villar

Date: 10-18-18

Printed Name: David Villar

☒ Applicant or ☐ Agent

FOR OFFICIAL USE ONLY

Project Number:

Case Numbers

PC-2018-001293

VA-2018-00165

Staff Signature:

Date:





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

David Vilar requests a variance of 10 ft to the required 10 ft side yard setback for Lot 8, Tijeras Heights Subdivision, located on 12804 Piru Blvd SE, zoned R-1D [Section 14-16-5-1]

Special Exception No:VA-2018-00031
Project No:Project# 2018-001293
Hearing Date:09-18-18
Closing of Public Record:09-18-18
Date of Decision:10-03-18

On the 18th day of September, 2018, property owner David Vilar ("Applicant") appeared before the Zoning Hearing Examiner ("ZHE") requesting a variance of 10 ft to the required 10 ft side yard setback ("Application") upon the real property located at 12804 Piru Blvd SE ("Subject Property"). Below are the ZHE's findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 10 ft to the required 10 ft side yard setback.
2. The City of Albuquerque Integrated Development Ordinance, Section 14-16-6-6(N)(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 the subject property which 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. Such special circumstances of the property either create an extraordinary hardship in the form of a substantial and unjustified limitation on the reasonable use or 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 the IDO or the applicable zone district.* (5) *The Variance approved is the minimum necessary to avoid extraordinary hardship or practical difficulties.*"
3. The Applicant bears the burden of ensuring there is evidence in the record supporting a finding that the above criteria are met under Section 14-16-6-4-(F)(2).
4. The application had been previously scheduled for hearing on the August 21, 2018 agenda. August 20, 2018, owner Vilar, submitted an e-mail requesting the hearing be deferred to the September agenda, due to personal matters. Since it was too late to notify the public, six (6) or several persons appeared to give evidence in opposition to the application. The ZHE had granted the deferral on Applicant's request, however, since the opposing persons had appeared to give evidence, the ZHE decided to permit the individuals to submit their evidence into the record. The ZHE ordered a copy of the recording, copies of photographs and documents submitted to be transmitted to



applicant, with the ZHE's request that applicant be prepared to respond to issues raised in opposition when the hearing commenced on the September agenda.

5. Mike Davidson, 12800 Piru SE, appeared and gave evidence in opposition to the application.
6. Diane Davidson, 12800 Piru SE, appeared and gave evidence in opposition to the application.
7. Mr. and Mrs. Davidson are the immediate next door neighbors to the subject address.
8. They submitted photographs evidencing deterioration to their common wall, caused by improper placement of the project.
9. They submitted photographs evidencing outward appearance of the project and how it does not conform to the architectural character of adjacent properties or the surrounding neighborhood.
10. They pointed out the application states the "existing, already built room of 10' X 10' is called a "pool room".
11. They submitted document evidence in the form of "screen shots" of an Air BNB website advertising the room as a "bed room".
12. They submitted photographs, evidencing public health and safety issues to it, an unprotected exterior gas supply line, with no warning sign, in this bedroom.
13. Ilena Estrella, 933 San Mateo NE, appeared and gave evidence in opposition to the application.
14. Gary Hays, 12724 Piru SE, appeared and gave evidence in opposition to the application.
15. Martina Mesmer, 511 Eugene Court, appeared and gave evidence in opposition to the application.
16. Judy Young, 13309 Rachel Road SE, appeared and gave evidence in opposition to the application.
17. John McBrayer, Ph.D., 12720 Piru SE, submitted an e-mail dated August 18, 2018 in opposition to the application.
18. Don L. Hanosh, 12812 Piru SE, submitted an e-mail in opposition to the application dated August 20, 2018. It states the application allegedly violates "at least four Tijeras Heights Restrictive Covenants."
19. Roger and Wanda Umber, 12520 Piru SE, submitted a letter dated August 11, 2018, in opposition to the application.
20. A criminal action has been filed in Bernalillo County Metropolitan Court by the City of Albuquerque alleging code violations against Applicant/defendant.
21. ZHE acknowledges this potentially raises issues of his constitutional privileges, when the facts in this application may implicate him in the criminal allegations.
22. An audio copy of the evidence submitted by the above persons in opposition and copies of photographs and documents submitted were transmitted to Applicant.
23. David Vilar, owner, appeared and Zachary Ogaz, Attorney at law, filed a written entry of appearance before Applicant took his oath.
24. ZHE then stated knowledge of the parallel criminal action filed in Metro Court, and gave Applicant a complete recitation of his privileges, both state and federal.
25. Applicant stated he understood his privileges as recited by the ZHE. The ZHE then requested that the Applicant and his attorney confer and decide how to proceed.

26. The ZHE found that the Applicant knowingly and intelligently waived his privileges and allowed Applicant to give evidence in support of his application.
27. He acknowledged receipt of the prior hearing evidence submitted by the six persons in opposition to the application and indicated he would address the issues that were raised.
28. Applicant stated he constructed the pool room, completely unaware that the city required a permit to construct the accessory structure.
29. Applicant stated that he had converted the use to a rented bedroom, again stating he was unaware he needed permits for these actions.
30. Applicant stated in his justification letter accompanying the application in response to the question of special circumstances “these special circumstances create a hardship because the pool room is already built... and it is difficult to return the property back to the original state and will cause significant financial hardship.” (Emphasis in original application.)
31. Mike Davidson, 12800 Piru SE, appeared and gave evidence in opposition to the application.
32. Davidson stated he had informed Applicant that he was constructing the pool house in a required setback and that he would need permission from the city before he built.
33. Davidson stated Applicant had improperly backfilled to a depth of 24” before he poured the concrete pad for the pool room.
34. Davidson pointed out in photographs submitted (Ex. C) the discolored area rising approximately 24”, visible from his side of their common wall, evidencing ongoing deterioration to the wall, potentially leading to collapse and economic hardship and injury to him as an adjacent property owner.
35. Ilena Estrella, 935 San Mateo NE, appeared and gave evidence in opposition to the application.
36. Martina Mesmer, 511 Eugene Court, appeared and gave evidence in opposition to the application.
37. Judy Young, Rachel Road SE, appeared and gave evidence in opposition to the application.
38. Wanda Umber, 12520 Piru SE, appeared and gave evidence in opposition to the application.
39. Applicant was given an opportunity to respond to anything stated by persons in opposition.
40. Covenants cannot be enforced by the city, however, the ZHE can review as a factor in determining if the application causes significant material adverse impacts on the surrounding properties.
41. The alleged special circumstances were self-imposed.
42. Significant material adverse impact on surrounding properties in the vicinity is already apparent and obvious, since the results of the improperly placed structure are apparent in the exhibits.
43. Any extraordinary hardships were self-imposed.
44. The ZHE finds that the Applicant has authority to pursue this Application.

CONCLUSIONS OF LAW:

The criteria within Section 14-16-6-6(N)(3)(a) of the Integrated Development Ordinance Albuquerque Zoning Code are not satisfied.

DECISION:

The request for a variance of 10 ft to the required 10 ft side yard setback is DENIED.

If you wish to appeal this decision, you must do so by October 18, 2018 in the manner described below. A non-refundable filing fee will be calculated at the Planning Department's Land Development Coordination counter and is required at the time the Appeal is filed.

Appeal must be filed with the Planning Department within 15 days after the decision. The appeal shall specifically state the section of the Integrated Development Ordinance, City regulation, or condition attached to a decision that has not been interpreted correctly, as required by Section 14-16-6-4(U)(3)(a)(3) of the Integrated Development Ordinance. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, Planning Application Counter located on the west side of the lobby. **Please present this letter of notification when filing an appeal.** When an application is withdrawn, the fee shall not be refunded.

Once an appeal is accepted by the Planning Department, it shall prepare and transmit a record of the appeal together with all appeal material received from the appellant to impacted parties and to the Land Use Hearing Officer (LUHO) through the Clerk of the City Council.

The LUHO shall then schedule a hearing on the matter within 30 consecutive days of receipt and notify the parties, pursuant to Section 14-16-6-4(U)(3)(d). The Planning Department shall give written notice of an appeal, together with a notice of the date, time and place of the hearing to the applicant, a representative of the opponents, if any are known, and the appellant.

Please note that pursuant to Section 14-16-6-4(U), of the Integrated Development Ordinance, you must demonstrate that you have legal standing to file an appeal as defined.

You will receive notice if any other person files an appeal. If there is no appeal, you can receive building permits any time after the appeal deadline quoted above; provided all conditions imposed at the time of approval have been met. However, the Zoning Hearing Examiner may allow issuance of building permits if the public hearing produces no objection of any kind to the approval of an application. To receive this approval, the applicant agrees in writing to return the building permit or occupation tax number.

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.



Stan Harada, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
David Vilar, 12804 Piru Blvd, 87123
Mike Davidson, 12800 Piru Blvd SE, 87123
Ilena Estrella, 12928 Marva Place SE, 87123
Wanda Umber, 12520 Piru SE, 87123
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Gary Hays, 12724 Piru SE, 87123

October 18, 2018

Planning Department
600 2nd Street,
Plaza Del Sol Building

RE: Notice of Appeal Request for Variance of 10' to the 10'

In accordance with the "ZONING HEARING EXAMINER RULES OF PROCEDURE" IDO 14-16-6-4-(M)(2) and Integrated Development Ordinance (IDO).

The following sections specifically state the section of the Integrated Development Ordinance, City regulation, condition attached, Zoning Hearing Examiner Rules and procedures to a decision that has not been interpreted correctly, as required by Section 14-16-6-4(U)(3)(a)(3) of the Integrated Development Ordinance.

The ZHE justifications outlined are related building and structural complaints and does not address the scope of the Variance of 10' to the 10'. IDO 14-16-6-4-(a). The ZHE has not interpreted or applied correctly the Setback Variance or the Dimensional Standards in IDO 14-16-4-3(F)(5). The applicant has complied with all applicable standards in this IDO. IDO 14-16-4-3(F)(5) & IDO 14-16-5-11(C)(3)(D). Upon approval of the Variance of 10' to the 10'. The applicant will immediately obtain a permit from the Building Safety & Permitting office and promptly rectify any and all issues that the State Certified Inspector addresses and be in code compliance.

IDO 14-16-6-4-(M)(2) each public hearing (other than appeal hearings) shall include an opportunity for all parties to the hearing to be heard regarding the application.

&

Section C-6: Continuance or Deferral of a ZHE Hearing. *An advertised hearing may be continued or deferred to a time and place announced at the hearing without re-advertising or reposting of signs. A continuance or deferral may be granted for good cause shown. The first request by an applicant for a continuance or deferral shall be liberally granted.*

The applicant was granted a continuance on August 20th due to medical issues. The hearing was postponed for 30 days, which is ample time to notify the public again. However, the ZHE let the opposition testify and submit evidence that isn't relevant to the Variance of 10' to the 10' without the applicant be present too.

IDO 14-16-6-4-(M)(2) each public hearing (other than appeal hearings) shall include an opportunity for all parties to the hearing to be heard regarding the application.

&

Section C-7 ZHE Public Hearing Testimony. *At a ZHE public hearing, applicants shall be allowed 5 minutes to testify regarding their application, and other interested parties shall be allowed 2 minutes. The applicant shall be allowed 2 minutes for rebuttal at the conclusion of all testimony provided by interested parties. The ZHE may grant additional time for good cause, e.g. (representing a group or organization).*

The applicant was not able to submit a rebuttal at the conclusion of the opposition's testimony on August 21st. Therefore, ALL parties weren't heard at the August 21st hearing. The ZHE allowed the opposition to testify and submit evidence that is not reasonable and relevant to the Variance of 10' to the 10'. The testimony could impair the independence of the judgment of the ZHE.

Section C-5 - Record of the ZHE Hearing. *The Planning Director shall make a full record of the hearing by sound recording; any person shall have the opportunity to listen to, copy, or transcribe the recording at any reasonable time at the office of the Planning Director. Summary minutes shall be kept of all ZHE hearings and they shall be kept available for public inspection.*

The ZHE office did submit the recording to the applicant multiple times during the 30-day time period. However, the recording files that were sent by the ZHE office were corrupted and did not work. The applicant did his due diligence of continually contacting the ZHE to rectify this issue. The applicant went to the ZHE office to retrieve a CD of the recording. The CD that was given to the applicant did not work either. The ZHE office finally sent out the correct working file on **September 17th @ 3:42 pm**. This was less than 24 hours before the hearing that was scheduled for **September 18th @ 9:00 am**.

IDO 14-16-6-4(M)

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Section C-7. ZHE Authority to Establish Rules for Testimony at a Public Hearing. *The ZHE has the authority to limit repetitive, irrelevant or inappropriate testimony and evidence that is presented at a ZHE public hearing. The ZHE and speakers shall confine their remarks to the relevant matters pertaining to the application. The ZHE shall not take into consideration testimony or evidence presented during a public hearing that is not relevant to the application. The ZHE, subject to these rules, shall be permitted to amend the procedure of a public hearing, provided that the amendments are reasonable and not violative of municipal, state or federal law.*

In **"ZONING HEARING EXAMINER RULES OF PROCEDURE" "Findings"** document submitted by the ZHE on October 3, 2018, the examiner has taken into consideration repetitive, irrelevant or inappropriate testimony, and evidence that is not in the scope of the Variance of 10' to the 10'.

Findings Section 5, 6, 7- repetitive, irrelevant or inappropriate testimony, and evidence that is not in the scope of the Variance of 10' to the 10'.

Findings Section 8- The evidence has shown is a picture of a wet wall after a rainstorm and has no signs of deterioration. An architect/engineer has reviewed the structures and surroundings and does not believe the proposed structure has significant impacts on surrounding properties or infrastructure improvements in the vicinity. Furthermore, walls are not applicable for a Variance of 10' to the 10'. **IDO 14-16-5-7(B).** *Upon approval of the Variance of 10' to the 10'. The applicant will immediately obtain a permit from the Building*

Safety & Permitting office and promptly rectify any and all issues that the State Certified Inspector addresses and be in code compliance.

Findings Section 8, 9, 10, 11- Irrelevant or inappropriate testimony for a Variance of 10' to the 10'. The cosmetic appearance of the structure is not appropriate testimony for a Variance of 10' to the 10'. The structure is within the architectural character of the surrounding area. Furthermore, Building design is not applicable for a Variance of 10' to the 10'. **IDO 14-16-5-11-(B).** *The structure is constructed of suitable weather-resistant materials. Since the material used is similar to existing houses around the applicant, it will not be injurious to the surrounding neighborhood or the larger community. IDO 14-16-6-6(N)(3)(a)(3). Upon approval of the Variance of 10' to the 10'. The applicant will immediately obtain a permit from the Building Safety & Permitting office and promptly rectify any and all issues that the State Certified Inspector addresses and be in code compliance.*

Findings Section 12 - Testimony from an unqualified individual is an irrelevant and inappropriate testimony for a Variance of 10' to the 10'. The structure is built to IRC codes and is a safe place. Public safety, health, or welfare has not been affected **IDO 14-16-6-6(N)(3)(a)(2).** There are no health or safety concerns with the structure. The applicant has occupied the room for over the past 2 years without incident. If the city inspector has any concerns for the room it will be addressed immediately. The applicant has As-Built drawings of the room that will show the addition complies with the City's building code and we invite the City to do an inspection of the addition. Upon approval of the Variance of 10' to the 10'. The applicant will immediately obtain a permit from the Building Safety & Permitting office and promptly rectify any and all issues that the State Certified Inspector addresses and be in code compliance. See attached As-built drawings.

Findings Section 13, 14, 15, 16, 17, 18, 19 - repetitive, irrelevant or inappropriate testimony, and evidence that is not in the scope of the Variance of 10' to the 10'.

Findings Section 20, 21, 22, 23, 24, 25, 26 – pending criminal action is irrelevant and inappropriate and is not in the scope of the Variance of 10' to the 10'.

Findings Section 27 – SEE ABOVE "Section C-5 - Record of the ZHE Hearing"

Findings Section 28, 29 – Applicant was unaware of a permitting or zoning issue until he received notice of the violation in the mail. A contractor was hired and did not inform the applicant of the zoning and permitting requirements. Upon notice from the city regarding the 5' variance issue, the applicant immediately tried to get into compliance. The applicant met with multiple zoning officials and they helped him get all the necessary papers processed. By the time the applicant completed the paperwork for the 5' variance the ordinance changed to a 10' variance. The applicant immediately updated the paperwork again and resubmitted it to the county. The applicant has done his due diligence in complying with all requests from the City of Albuquerque and is ready immediately upon obtaining a variance to submit all the documentation for a building permit. The applicant has worked with the Building Safety & Permitting office to provide As-Built drawings and the approval of the Variance of 10' to the 10'.

Findings Section 30 – The ZHE did not include the entire statement regarding the special circumstance. The pool room is already built the size of the room is approx. 10'x10' and is very difficult to return the property back to the original state and will cause a significant financial hardship. The pool shed addition does not affect any other properties in the area. There is an existing cinder block wall on the property line. The pool room is built against the wall and is not attached. The benefit of the addition will increase surrounding property values.

At the time of submitting the application, the applicant was unaware of self-imposed hardship restrictions. It was the intent of the applicant to address all questions appropriately. **IDO 14-16-6-6(N)(3)(a)(1)** Granting the variance and permit provides increased value to all homes in the neighborhood. The variance does not cause a significant material adverse impacts on surrounding properties or infrastructure improvements in the vicinity since 10% of the house in the neighborhood have very similar structures. **IDO 14-16-6-6(N)(3)(a)(3)** There are 78 non-complainant structures in the Singing Arrow neighborhood that do more to devalue the housing values in the neighborhood.

The variance requested here is a matter of a few feet and is requested because of the physical limitations inherent to my property. The Variance will not materially undermine the intent and purpose of this IDO or the applicable zone district. **IDO 14-16-6-6(N)(3)(a)(4)** Due to the layout of the property, the location of the structure was the least obstructive and most appropriate location for construction. The structure is adjacent to the pool and was the most logical location at the time. It was easier for storage of pool supplies and patio furniture. The structure has provided the applicant with a place to store pool equipment, overall additional square feet, use as an extra room during the summer months, additional economic opportunities. Proper maintenance and improvements to the applicant's home improves the property values of all owners in the neighborhood. Storing outdoor furniture and pool equipment in the structure is more conducive to the overall appearance of the neighborhood. Therefore, the property is cleaner and more attractive, which benefits all property values. Otherwise, pool equipment and outdoor furniture will have to be stored outside on the side of the house which will not be as favorable to the overall appearance of the neighborhood. **IDO 14-16-6-6(N)(3)(a)(5)** The Variance approved is the minimum necessary to avoid extraordinary hardship or practical difficulties. The variance will improve the value of the property and also enhance the values of properties in the surrounding neighborhood.

Findings Section 31, 32 – There is no evidence by Mr. Davidson that he told the applicant about the variance. Mr. Davidson did state in his written and verbal testimony that he told the applicant about the 10' variance. In contrary, the 10' variance was only approved in the IDO in May 2018. The applicant and Mr. Davidson have not spoken since October 2017. This is a false and misleading testimony. Furthermore, Mr. Davidson has told the applicant numerous times and again in August at Metro Court that he didn't mind the structure and that it wasn't him who complained to the City. A Freedom of Information Act (FOIA) has been submitted to retrieve this recording as evidence that Mr. Davidson has perjured himself in numerous accounts.

Findings Section 33- The concrete pad was poured in mid-2015 and had nothing to do with the structure that was built late-2017. Furthermore, Mr. Davidson is not a qualified expert and has no information regarding the design or integrity of the concrete pad. The

assumptions by Mr. Davidson is irrelevant and inappropriate testimony, that is not in the scope of the Variance of 10' to the 10'. The building design is not applicable for a Variance of 10' to the 10'. **IDO 14-16-5-11-(B).** Upon approval of the Variance of 10' to the 10'. The applicant will immediately obtain a permit from the Building Safety & Permitting office and promptly rectify any and all issues that the State Certified Inspector addresses and be in code compliance.

Findings Section 34- Discoloration is not evidence of ongoing deterioration. Mr. Davidson is not a qualified expert and has no information regarding the discoloration. Additionally, the applicant responded to this claim during his testimony. The applicant under oath stated that he would be responsible for any damages and cover any cost if there is significant damage or collapse of the wall. Furthermore, the applicant has retained an architect/engineer that has reviewed the structure and surrounding area and does not believe the wall or concrete pad will have an impact on the surrounding properties or infrastructure. The building design is not applicable for a Variance of 10' to the 10'. **IDO 14-16-5-11-(B).** Upon approval of the Variance of 10' to the 10'. The applicant will immediately obtain a permit from the Building Safety & Permitting office and promptly rectify any and all issues that the State Certified Inspector addresses and be in code compliance.

Findings Section 35,36, 37, 38 - repetitive, irrelevant or inappropriate testimony, and evidence that is not in the scope of the Variance of 10' to the 10'.

Findings Section 40, 41, 42, 43 - The variance of 10' to the 10' or the structure has no significant material adverse impacts on the surrounding properties. Since the material used is similar to existing houses around the applicant, it will not be injurious to the surrounding neighborhood or the larger community

Section C-5 - Cross Examination of Applicant(s)/Interested Parties during a Public Hearing. The ZHE shall permit reasonable and relevant cross examination of any applicant or interested party that testifies at a ZHE public hearing. The cross examination questions shall be directed at the ZHE who shall re-direct the question towards the person under cross examination. The cross examination shall be limited to two minutes in duration. A person subject to cross examination is not obligated to answer any of the questions, however may choose to do so. The ZHE has discretion to limit the time allotted to cross examine.

This information was never disclosed at the Public Hearing.

Out of approximately 4,850 people that live in Singing Arrow, only 5 households have an issue with the structure that the applicant has constructed. The Singing Arrow Neighborhood Association, which the 5 households are the only active members. Furthermore, the neighborhood association and all residents had ample opportunity (2 months with the continuous) to meet with the applicant concerning the zoning/permit issue as described in the ZHE instructions. No one ever contacted the applicant with their concerns or issues. **IDO 14-16-6-4-(K)(2) & IDO 14-16-6-4-(C)**
78 homes in the neighborhood have structures up to the property line and aren't in compliance with the 10' setback or the legacy 5' setbacks. (See attachment)

IDO 14-16-5-11(E)(2)(A)(4)

The addition doesn't impede the views of neighbors and is barely noticeable from the street. The characteristic of the neighborhood is in no way changed and there is no threat of injury to the public health or safety. The pictures submitted by Mr. Davidson were from Mr. Davidsons property. The pictures the applicant has submitted are three different vantage points from the street (East, Front, West). The variance and structure have not interfered with the views, access, or neighborhood characteristics, or security. See attached picture.

Section C-5 - Notice of Decision of the ZHE. The ZHE shall act on an application within 15 days of the conclusion of the hearing. He shall prepare a written Decision, which includes the key findings of fact. This Decision shall be made part of the record. Each material finding shall be supported by substantial evidence or, if it is noted on the record, by the personal knowledge of or inspection of the ZHE.

No substantial evidence has been submitted regarding the variance of 10' to the 10'. The ZHE acted arbitrarily by relying almost exclusively upon the oppositions verbal and written testimony and not addressing the variance of 10' to the 10' issue.





Front View of House

Zoning Hearing Examiner
City of Albuquerque
600 2nd Street NW, 3d Floor
Albuquerque, NM 87102

RE: Request for Variance of 10' to the 10' side of yard at 12804 Piru Blvd SE, Albuquerque, NM 87123 (address of the subject property).

1) 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 district and vicinity. Those special circumstances create a hardship because the pool room is already built the size of the room is approx 10'x10' and is very difficult to return the property back to the original state and will cause a significant financial hardship. The pool shed addition does not affect any other properties in the area. There is an existing cinder block wall on the property line. The pool room is built against the wall and isn't attached. The benefit to the addition will increase surrounding property values.

2) The Variance will not be materially contrary to the public safety, health, or welfare because the pool room is built to IRC codes and is a safe place. Public safety, health, or welfare will not be affected by a pool room.

3) The Variance does not cause adverse impacts on surrounding properties or infrastructure improvements in the vicinity because the pool room is built against the current cinder block wall, however it is not attached to the wall. No surrounding properties or infrastructure is affected by the pool room. The room is currently built and is a reasonable size (10'x10') and blends in well with the house and community.

4) The Variance will not materially undermine the intent and purpose of this IDO or the applicable zone district because it is a very small addition to the house. The appox size is 10'x10'.

5) The Variance approved is the minimum necessary to avoid extraordinary hardship or practical difficulties because to return the property back to the original state and will cause a significant financial hardship.

Signature _____

Date: 07/02/2018

View from Eastside

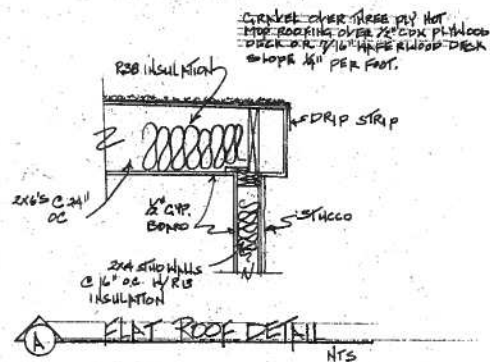
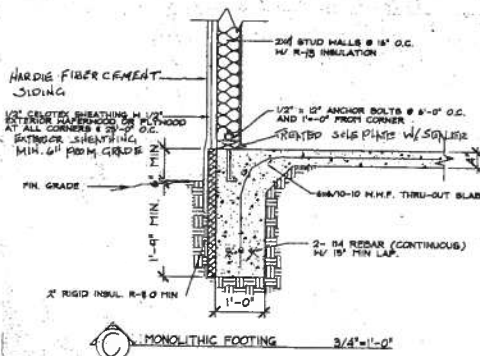
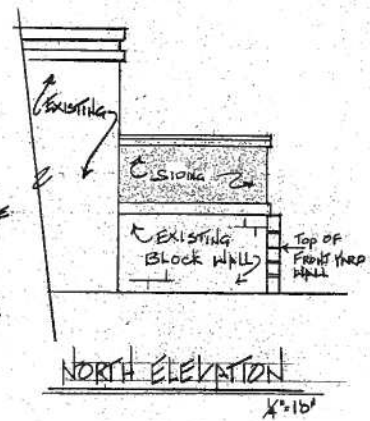
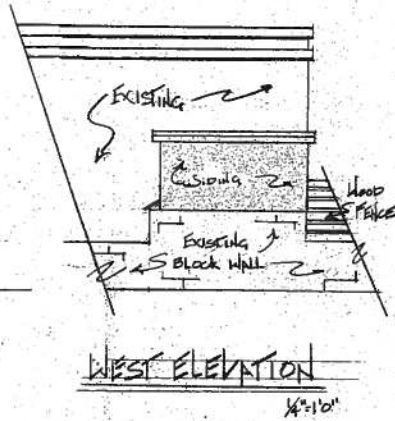
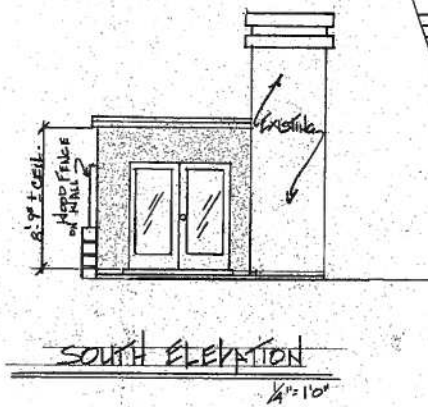


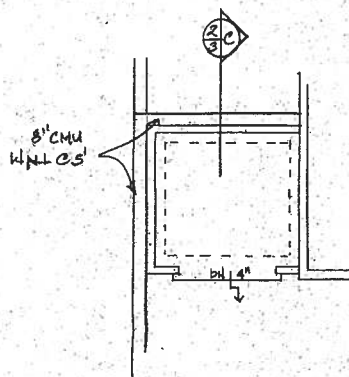


View from Westside

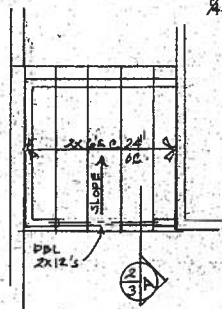


DATE: MAY 10, 1991
 SHEET: 1 OF 2
 SITE PLAN
 7804 PRU BLVD. SE -
 NITELIQUE BOULEVARD, NEW MEXICO
 STORGE GLED. N.
 TRINCHULEN
 RESIDENTIAL GRAPHICS
 10000-1479 #662 000 899-2009

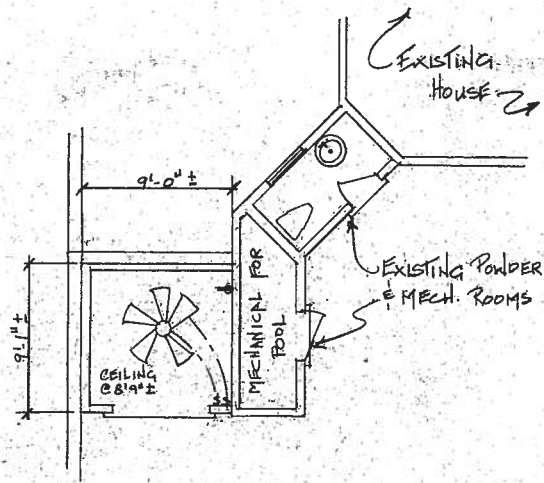




FOUNDATION PLAN
1/4" = 1'0"



ROOF FRAMING PLAN
1/4" = 1'0"



FLOOR/ELECTRICAL PLAN
1/4" = 1'0"

NOTES

1. STORAGE POD ROOM IS UNDER SPARE
2. ALL WALLS THICKER THAN 8" REQUIRE KIRK BLOCKING @ 8"
3. ALL STEEL WALLS FULLY GRADED