CITY OF ALBUQUERQUE

Planning Department
David Campbell, Director

Development Review Division 600 2nd Street NW – 3nd Floor Albuquerque, NM 87102

NOTICE OF APPEAL



May 17, 2019

TO WHOM IT MAY CONCERN:

The Planning Department received an appeal on May 16, 2019. 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-19-10

PLANNING DEPARTMENT CASE FILE NUMBER: PR-2019-002175

VA-2019-00177 VA-2019-00075

PO Box 1293

Albuquerque

AGENT:

JAG Planning & Zoning Juanita & Andrew Garcia

P.O. Box 7857

Albuquerque NM 87194

NM 87103

APPLICANT:

Pamela L. Wiley

www.cabq.gov

6136 Full Moon Ave. NW Albuquerque NM 87114

cc: Crystal Ortega, City Council, City county bldg. 9th floor Kevin Morrow/Legal Department, City Hall, 4th Floor-Zoning Enforcement ZHE File Ramon Orozco, 6140 Full Moon Ave NW, 87114 Pam Wiley, 6136 Full Moon Ave NW, 87114 Daniel Kendall, 6144 Full Moon Ave NW, 87114

Acity of lbuquerque



DEVELOPMENT REVIEW APPLICATION

Effective 5/17/18

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	☐ Historic Certificate of Appropriateness – Major (Form L)		☐ Wireless Telecommunications Facility Waiver (Form W2)		
☐ Archaeological Certificate (Form P3)	☐ Historic Design Standards and Guidelines (Form L)		Policy Decisions		
☐ Historic Certificate of Appropriateness — Minor (Form L)	☐ Master Development Plan (Form P1)		☐ Adoption or Amendment of Comprehensive Plan or Facility Plan (Form Z)		
☐ Alternative Signage Plan (Form P3)	☐ Site Plan – EPC including any Variances – EPC (Form P1)		☐ Adoption or Amendment of Historic Designation (Form L)		
☐ WTF Approval (Form W1)	☐ Site Plan – DRB (Form	P2)	☐ Amendment of IDO Text (Form Z)		
☐ Minor Amendment to Site Plan (Form P3)	☐ Subdivision of Land – I	Minor (Form S2)	☐ Annexation of Land (Form Z)		
Decisions Requiring a Public Meeting or Hearing	☐ Subdivision of Land – I	Major <i>(Form S1)</i>	☐ Amendment to Zoning Map – EPC (Form Z)		
☐ Conditional Use Approval (Form ZHE)	☐ Vacation of Easement	or Right-of-way (Form V)	☐ Amendment to Zoning Map – Council (Form Z)		
☐ Demolition Outside of HPO (Form L)	☐ Variance – DRB (Form	<i>V</i>)	Appeals		
☐ Expansion of Nonconforming Use or Structure (Form ZHE)	□ Variance – ZHE (Form	ZHE)	Decision by EPC, LC, DRB, ZHE, or City Staff (Form A)		
APPLICATION INFORMATION					
Applicant: Pamela L. Wi	Lev		Phone: 605 · 270 · 7818		
Address: 6136 Full Moon A	re NW		Email:		
City: Albuqueraw		State: NM	Zip: 87114		
Professional/Agent (if any): TAG Plan	ning + Zoning	a-Juanita Gara	Phone: 362 · 8903 / 363 · Set		
Address: P. 0. Box 7857	J	Andrew Gard	k Email: 1090, 109 Planning and		
city: Albuquerave		State: NM	Zip: 8-1194		
Proprietary Interest Wite: A Battang DI	reperty-owne	List all owners:			
BRIEF DESCRIPTION OF REQUEST	. 0				
Appeal THE Vari	ance Decision	7			
3.1					
SITE INFORMATION (Accuracy of the existing le	egal description is crucial	Attach a separate sheet if	necessary.)		
Lot or Tract No.: 20		Block: C	Unit: 6		
Subdivision/Addition: Paradisc 5	kies	MRGCD Map No.:	UPC Code: 10110660072303182		
Zone Atlas Page(s):	Existing Zoning:	2 - T	Proposed Zoning:		
# of Existing Lots:	# of Proposed Lots:		Total Area of Site (acres): .0918		
LOCATION OF PROPERTY BY STREETS					
Site Address/Street: 6140 Full Moon A	Between: Quesar	St. NW	and: Neptune St. NN		
CASE HISTORY (List any current or prior project and case number(s) that may be relevant to your request.)					
VA-2019-00075		2000 - 100 - 100 - 100 - 100 - 100 - 100 - 100 - 100 - 100 - 100 - 100 - 100 - 100 - 100 - 100 - 100 - 100 - 1			
Signature: Cendrew Garica. Date: 5/16/19					
Printed Name: Andrew Gave			☐ Applicant or ☑ Agent		
FOR OFFICIAL USE ONLY					
Case Numbers	The second secon	Action	Fees		
VA-2019-00177 -		Appeal	\$130		
-		· · · · · · · · · · · · · · · · · · ·			
Meeting/Hearing Date:			Fee Total: \$130		
Staff Signature:		Date: 5-16-18	Project # PR-2019-802175		
1 11 1					

FORM A: Appeals

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

APF CEF	PEAL OF A DECISION OF CITY PLANNING STAFF (HISTORIC PRESERVATION PLANNER) ON A HISTORIC RTIFICATE 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:			
∠	A Single PDF file of the complete application including all documents being submitted must be emailed to PLNDRS@cabg.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. PDF shall be organized with the Development Review Application and this Form A at the front followed by the remaining documents in the order provided on this form.			
<u> </u>	Project number of the case being appealed, if applicable: 2019 - 002175			
_	Application number of the case being appealed, if applicable: VA - 2019 - 00075			
✓	Type of decision being appealed: ZHE Variance Approva			
₹	Letter of authorization from the appellant if appeal is submitted by an agent			
✓	Appellant's basis of standing in accordance with IDO Section 14-16-6-4(U)(2)			
✓	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)			
₹	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 appublic meeting or hearing, if required, or otherwise processed until it is complete.						
Signature: Kndrew Sascis	Date: 5/16/19					
Printed Name: Andrew Garcia	☐ Applicant or ☑ Agent					
FOR OFFICIAL USE ONLY						
Case Numbers:	Project Number:	18/1				
VA-201A-00177	PR-2019-002175					
		G (I/IIb)				
Staff Signature: V	N. C.					
Date: 5-16-18						

LETTER OF AUTHORIZATION

Appeal

Subject Property: 6140 Full Moon Ave NW, Lot 20, Block C, Paradise Skies Unit 6

I, the undersigned owner of subject property, hereby designate JAG Planning & Zoning, LLC to be my authorized representative for all planning and zoning matters associated with the appeal of VA-2019-00075.

Subject property: 6136 Full Moon Ave NW

Pamela Wiley

Date



May 16, 2019

Ken Sanchez, President
Albuquerque City Council
c/o Land Use Hearing Officer (LUHO)

Honorable President Ken Sanchez,

This appeal has been submitted pursuant to Section §14-16-6-4(U) of the Integrated Development Ordinance by JAG Planning and Zoning, LLC on behalf of Pamela L. Wiley. Ms. Wiley appeals the approved decision of the Zoning Hearing Examiner (ZHE) dated May 1, 2019 for a five-foot variance to the required five-foot side yard setback requirement for the location of 6140 Full Moon Ave NW and legally described as Lot 20, Block C, Paradise Skies Unit 6 (VA-2019-00075).

Standing and Timing of Appeal

This appeal was submitted within the appeal deadline as specified within the ZHE decision of May 1, 2019. Ms. Wiley has standing to appeal this decision since Ms. Wiley is a property owner within 100 feet of the subject property and was required to be notified of this request, as specified in Table 6-4-3. The appellant was present at the April 16, 2019 ZHE hearing, as required by Section 6-4-4 (U)(2)(b) and did provide testimony and evidence to support the denial of this request.

Appeal 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(U)(4)(a) The decision-making body or the prior appeal body acted fraudulently, arbitrarily, or capriciously.
- 6-4(U)(4)(b) The decision being appealed is not supported by substantial evidence.

• 6-4(U)(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

Criteria for Approval of a Variance

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 <u>all</u> of the following criteria:

- 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, including but not limited to size, shape, topography, location, surroundings, and physical characteristics, and such special circumstances were created either by natural forces or by government eminent domain actions for which no compensation was paid. Such special circumstances of the property either create an extraordinary hardship in the form of 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 this IDO or the applicable zone districts.
- 5. The Variance approved is the minimum necessary to avoid extraordinary hardship or practical difficulties.

History of the Property

The subject site of 6140 Full Moon Ave NW is zoned R-T and is approximately .092 acres in size. The site contains a single-family dwelling unit with an attached covered patio along the east and south portions of the property. The appellant filed complaints to the City of Albuquerque Planning Department regarding the illegal construction of the covered patio along the east portion of the dwelling unit. A representative from the Building and Safety Division investigated the complaint and ultimately filed a criminal complaint regarding the illegal construction of the covered patio. As a result of the criminal complaint, the applicant filed a variance application to seek approval of the covered patio. The subject variance and appeal are specific to the covered patio located east of the dwelling unit, which abuts the appellant's property.

ZHE Hearing of April 16, 2019

The appellant, was present at the April 16, 2019 ZHE hearing and provided verbal testimony regarding the variance request. The appellant provided photographs to demonstrate material adverse impacts on her property associated to water drainage from the covered structure onto the appellant's property. The applicant provided verbal testimony regarding the variance. The applicant had requested for an interpreter to assist with the applicant's public testimony. Unfortunately, the ZHE recording of the April 16, 2019 hearing is in poor condition since staff did not verify if the applicant's and the public's testimony was clearly audible.

Reasons for the Appeal

- A. The Zoning Hearing Examiner erred in applying the requirements of the Integrated Development Ordinance, specifically regarding criterion number 1, which reads as follows:
 - 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, including but not limited to size, shape, topography, location, surroundings, and physical characteristics, and such special circumstances were created either by natural forces or by government eminent domain actions for which no compensation was paid. Such special circumstances of the property either create an extraordinary hardship in the form of substantial and unjustified limitation on the reasonable use or return on the property, or practical difficulties result from strict compliance with the minimum standards.

Findings number of 3 and 31 reference that the applicant met this criterion but no evidence is found within the record as to how this criterion has been met. The applicant has argued that a covered patio is needed to alleviate the effects of rain and snow on the east portion of the dwelling. This area is currently maintained for the applicant's dogs and the covered patio will assist the applicant when providing food and water to the dogs. However, the dogs could be protected and accessible to Mr. Orozco using the covered patio on the south end of the house. The south patio area is exposed to winter sun and not subject to runoff from the house. There is also back yard area available if some other sort of dog run structure is desired. Access to the area in question is only available from the home along the south side of the dwelling unit or from a pedestrian gate located along the west portion of the dwelling unit. The submittal does not demonstrate access to the subject structure along the north portion (or the front door of the dwelling unit) of the property.

The applicant does not specifically reference any special circumstances that is applicable to the subject property that is not self-imposed. The applicant had the covered patio constructed without a building permit and did not seek a variance to allow a structure within the required setback area; therefore, the applicant created a self-imposed condition on the site.

This criterion also requires a site to have a special circumstance that does not generally apply to other properties in the same zone district and vicinity, including but not limited to size, shape, topography, location, surroundings, and physical characteristics. It also requires the special circumstance to be created by either natural forces or by government eminent domain actions for which no compensation was paid. The applicant did not provide any written or verbal testimony that would satisfy this portion of this criterion.

In addition, the applicant did not specify how a special circumstance of the property would either create an extraordinary hardship in the form of substantial and unjustified limitation on the reasonable use or return on the property, or practical difficulties resulting from strict compliance with the minimum standards. The applicant did not demonstrate how this use could not occur anywhere else on the property without the need of a variance.

The Zoning Hearing Examiner provided findings that are not supported by substantial evidence found in the record.

- B. The Zoning Hearing Examiner erred in his approval of this variance and acted capriciously in regards to criterion number 3, which reads as follows:
 - 3. The Variance does not cause significant material adverse impacts on surrounding properties or infrastructure improvements in the vicinity.

As previously mentioned, Ms. Wiley was present at the April 16, 2019 ZHE hearing and presented evidence to the ZHE that demonstrated water overflow spilling onto Ms. Wiley's property from the subject structure (See Photos 2 &7). The subject structure currently contains rain gutters and down spouts; however, a down spout is directed toward Ms. Wiley's property. Recent rain activity has demonstrated the water overflowing along a legally permitted wooden fence on Ms. Wiley's property. With the approval of this request, the water may compromise the posts that are used to maintain the stability of the wooden fence. Originally, the applicant indicated that there was no water spilling onto Ms. Wiley's property but over the course of the hearing it was determined that modifications to the structure would be required to avoid any significant material adverse impact on the neighboring property due to water flowing onto the appellant's property.

It appears that the Zoning Hearing Examiner had attempted to mitigate this issue with the following condition of approval:

"Applicant shall modify or alter the structure to prevent overflow drainage to continue to flow onto adjacent neighbor Wiley."

This condition is not well written and appears confusing. Furthermore, the Zoning Hearing Examiner did not give specifics as to how or what modifications should occur to prevent the overflow of water onto Ms. Wiley's property. The Zoning Hearing Examiner should have been able to identify a solution to this adverse impact rather than have the applicant determine what modifications or alterations should occur to solve a problem that the applicant thought was nonexistent.

- C. The Zoning Hearing Examiner erred in approving this application by not considering the purpose of the IDO as specified in criterion number 4, which reads as follows:
 - 4. The Variance will not materially undermine the intent and purpose of this IDO or the applicable zone districts.

Purpose number 1-3(D) states that the IDO is intended to protect the quality and character of residential neighborhoods. The approval of this request does not mitigate an adverse impact on the abutting property with its only and poorly written condition of approval as previously discussed.

- D. The Zoning Hearing Examiner erred in approving this request beyond what is minimally required as specified in criterion number 5, which reads as follows:
 - 5. The Variance approved is the minimum necessary to avoid extraordinary hardship or practical difficulties.

The site plan submitted by the applicant demonstrates a 2'6" wide covered patio with a continued roof structure that projects to the applicant's side property line (See Photo 5 and applicant's site plan). The extended roof overhang is unnecessary and approving a variance to allow a structure up to a property line does not avoid extraordinary hardship or practical difficulties. If this approval stands, there is nothing in the approval that would prevent the property owner from demolishing the covered patio and constructing an addition to the dwelling unit up to the side property line.

There is language in the IDO supports the argument that the variance was approved beyond what is minimally required. The IDO defines "Structure" as, "Anything constructed or erected above ground level that requires location on the ground or attached to something having a location on the ground but not including a tent, vehicle, vegetation, or public utility pole or line." The IDO also defines "Setback" as "The shortest distance between a structure and a lot line." Since this request is for a variance to the side yard setback requirement of five feet, this approval will allow a structure to be built up to the side property line.

The Zoning Hearing Examiner did not provide any provisions in the decision that would protect the abutting property owner if the applicant or future owners should decide to make modifications in the area that has been granted approval of a setback variance.

Conclusion

The approval of this variance is contrary to the IDO as discussed above and the associated Notification of Decision letter contains findings of facts that are confusing and unsupported by the record. This application should be denied based on the arguments of this appeal.

Sincerely,

Jugnita Garcia

Principal

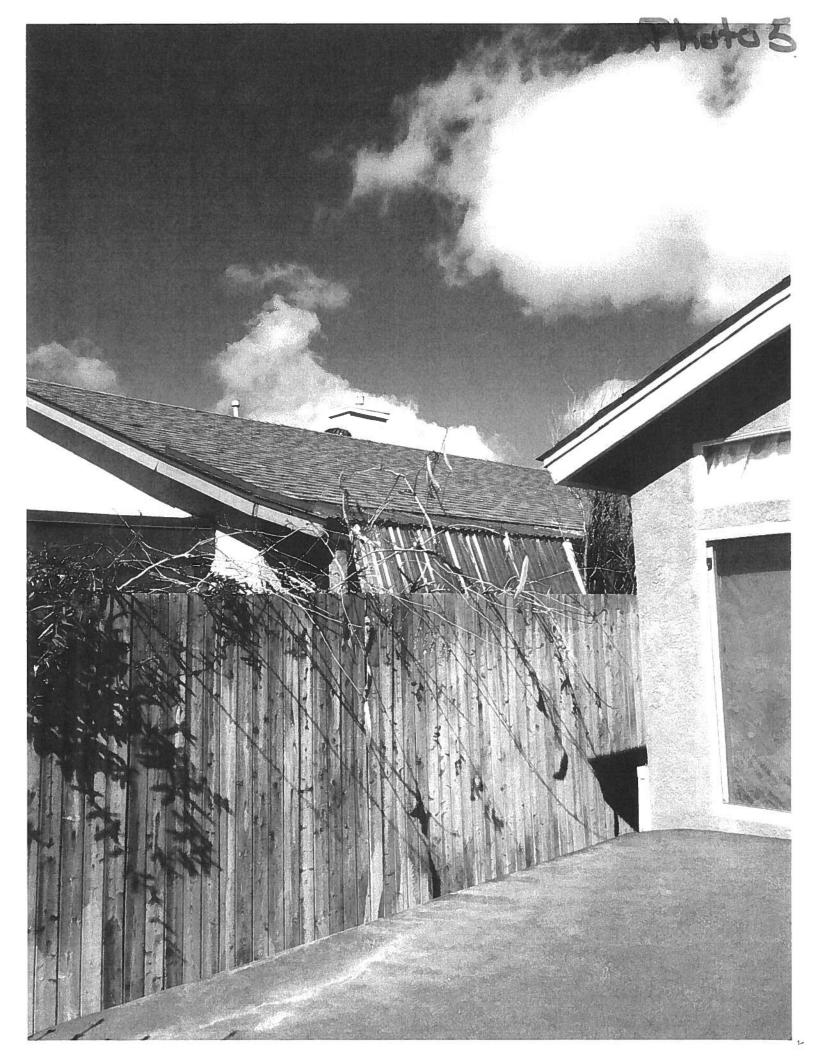


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CITY OF ALBUQUERQUE OFFICE OF ADMINISTRATIVE HEARINGS ZONING HEARING EXAMINER NOTIFICATION OF DECISION

Ramon Orozco requests a variance of 5 ft to the required 5 ft side yard setback for Lot 20, Block C, Paradise Skies Unit 6, located at 6140 Full Moon Ave NW, zoned R-T [Section 14-16-5-1]

Special Exception No:	.VA-2019-00075
Project No:	. Project# 2019-002175
Hearing Date:	. 04-16-19
Closing of Public Record:	. 04-16-19
Date of Decision:	. 05-01-19

On the 16th day of April, 2019, property owner Ramon Orozco ("Applicant") appeared before the Zoning Hearing Examiner ("ZHE") requesting a variance of 5 ft to the required 5 ft side yard setback ("Application") upon the real property located at 6140 Full Moon Ave NW ("Subject Property"). Below are the ZHE's findings of fact and decision:

FINDINGS:

- 1. Applicant is requesting a variance of 5 ft to the required 5 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 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. 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(N)(1).
- 4. Ramon Oroza, property owner appeared and gave evidence in support of the application.
- 5. The subject property address is 6140 Full Moon Ave NW.
- 6. The subject property is currently zoned R-T.

- 7. A site plan and photographs of the subject property and the area impacted by the requested variance were submitted in support of the application.
- 8. All property owners within 100 feet of the subject property and the affected neighborhood association were notified.
- 9. There is no affected neighborhood association.
- 10. Property owner is a disabled veteran, physically required to use a walker.
- 11. The proposed project will complete construction of an extension to the roof of the existing residence.
- 12. The structure is existing and was built without a permit.
- 13. Rain and snow roof drainage currently is deposited on a small sidewalk running parallel to the residence.
- 14. This drainage is creating an extreme safety and health hazard to owner.
- 15. During cold and winder weather, owner must negotiate his walker around accumulated snow and ice, creating a danger to his health and safety,
- 16. The side yard area is used as a dog run and is enclosed by a gate and fencing on the end.
- 17. Pam Wiley, 6136 Full Moon NW, appeared and gave evidence in opposition to the Application.
- 18. She is the adjacent neighbor on the side affected by the request.
- 19. The existing structure is a patchwork of mixed materials, wood, plastic corrugated sheeting.
- 20. The structure creates substantial runoff during heavy storms.
- 21. The existing structure creates and adverse impact on her adjacent property.
- 22. The gutter added by Applicant increased the amount of run off onto her property.
- 23. She has been required to construct drains and other methods to deal with the runoff.
- 24. This side yard is next to her bedroom, and Applicant uses this side yard as a dog run. He confines his animals for long periods and they constantly bark.
- 25. Don Kendall, 6144 Full Moon Ave NW, appeared and gave neutral evidence regarding the Application.
- 26. He is the adjacent property owner on the other side of the subject property.
- 27. He is not opposed to the Application.
- 28. He had commented that Applicant and he had resolved issues involving drainage and that Applicant had resolved the matter to his satisfaction.
- 29. He had no information regarding Pam Wiley's drainage issues with Applicant.
- 30. Applicant agreed to alter or otherwise modify the structure to prevent overflow drainage to continue to flow onto adjacent neighbor Wiley.
- 31. 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).
- 32. 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).
- 33. 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).
- 34. 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).

- 35. The variance approved is the minimum necessary to avoid extraordinary hardship or practical difficulties as required by Section 14-16-6-6(N)(3)(a)(5).
- 36. The proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
- 37. The Applicant has authority to pursue this Application.

DECISION:

APPROVAL of a variance of 5 ft to the required 5 ft side yard setback.

CONDITIONS:

Applicant shall modify or alter the structure to prevent overflow drainage to continue to flow onto adjacent neighbor Wiley.

APPEAL:

If you wish to appeal this decision, you must do so by May 16, 2019 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.

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

Ramon Orozco, 6140 Full Moon Ave NW, 87114 Pam Wiley, 6136 Full Moon Ave NW, 87114

Daniel Kendall, 6144 Full Moon Ave NW, 87114