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Mayor Timothy M. Keller

# CITY OF ALBUQUERQUE

*Albuquerque, New Mexico*

## Planning Department

### INTER-OFFICE MEMORANDUM

April 21, 2024

**TO:** Dan Lewis, President, City Council

**FROM:** Alan Varela, Planning Director

  
Alan Varela (Apr 24, 2024 15:39 MDT)

**SUBJECT:** AC-24-10, PR-2023-009649, VA-2023-00366: Yolanda Montoya, agent for Joe R. Romero, appeals the Zoning Hearing Examiner's decision to Deny a Variance of 30 feet to the required 45-foot Major Public Open Space landscape buffer for Lot 8-A-1, Block 2, Volcano Cliffs Unit 19, located at 7809 Aguila St. NW, zoned R-1D [IDO §14-16-5-2(J)(2)(a)(1)]

### OVERVIEW

On the January 16, 2024, Maia Martin, agent for property owner Joe Romero appeared before the Zoning Hearing Examiner ("ZHE") requesting a variance of 30 feet to the required 45-foot open space landscape buffer for the property located at 7809 Aguila St. NW.

The ZHE denied the Applicant's request in a written decision dated January 31, 2024.

The Appellant timely filed an appeal of the ZHE's decision prior to the appeal deadline of February 15, 2024. While the appeal application incorrectly cites standing for appeals of Declaratory Rulings and Adoption of the Comprehensive Plan [§14-16-6-4(V)(2)(a)3], the Appellant has standing to appeal this Variance decision as the original applicant and owner of the property listed in the application [§14-16-6-4(V)(2)(a)1].

### BASIS FOR APPEAL

IDO §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, with bulleted, italicized responses from the Planner for the ZHE.

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

**The adoption of the 45’ landscape buffer was never explained or revealed to the owner at time of purchase of the lot. The owner was presented with a plat of the property which at the time of purchase was an extra-large lot. In the plat it doesn’t show any reference to the 45’ landscaping buffer. When the lot was looked up in the city Address Report showed lot as R1-D which show the required set back as 20’ front, 10’ side and 15’ rear. The lot was purchased in 2021 by Joe Romero. Based off if what I can see in the city IDO it was last revised in 2018.”**

- *The subject site is zoned R-1D, adjacent to Major Public Open Space, and subject to the requirements in IDO §14-16-5-2(J)(2).*
- *Finding #11: Based on evidence in the record, it appears that there are no 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). Applicant asserts that there are special circumstances because of past platting actions taken by the owner of the Subject Property and the neighboring property at 7809 Aguila. It would appear that these platting actions are self-imposed. Also, Applicant does not demonstrate the assertion stated in Applicant’s justification letter that “all lots that surround this area do not have a 45’ landscape buffer” because of plats approved before 2019. It would appear that a mere plat approval (without further action to vest development rights) before a change to the setbacks by zone amendment would control in spite of that zone amendment.*
- *Finding #14: Because all prongs of the variance test must be satisfied and, as stated above, the Application failed to satisfy the above-stated prongs of the test, the Application must be denied.*

/ Lorena Patten-Quintana /  
Lorena Patten-Quintana, ZHE Planner  
Office of the Zoning Hearing Examiner  
City of Albuquerque Planning Department



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

Joe Romero (Agent, Maia Martin) requests a variance of 30 ft to the required 45 ft open space landscape buffer for Lot 8-A-1, Block 2, Volcano Cliffs Unit 19, located at 7809 Aguila ST NW, zoned R-1D [Section 14-16-5-2(J)(2)(a)(1)]

Special Exception No: ..... **VA-2023-00366**  
Project No:..... **Project#2023-009650**  
Hearing Date:..... 1-16-24  
Closing of Public Record:..... 1-16-24  
Date of Decision:..... 01-31-24

On the 16th day of January, 2024, Maia Martin, agent for property owner Joe Romero (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 30 ft to the required 45 ft open space landscape buffer (“Application”) upon the real property located at 7809 Aguila ST NW (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 30 ft to the required 45 ft open space landscape buffer.
2. The City of Albuquerque Integrated Development Ordinance, Section 14-16-6-6(O)(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 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.*”
3. Applicant bears the burden of providing a sound justification for the requested decision, based on substantial evidence, pursuant to IDO Section 14-16-6-4(E)(3).
4. Applicant bears the burden of showing compliance with required standards through analysis, illustrations, or other exhibits as necessary, pursuant to IDO Section 14-16-6-4(E)(4).

5. Agent appeared at the ZHE hearing on this matter and gave evidence in support of the Application.
6. Applicant established that the proper "Notice of Hearing" signage was posted for the required time period.
7. Applicant established that all property owners and neighborhood association entitled to notice were notified of the Application.
8. Applicant established that proper notice was provided pursuant to IDO requirements.
9. Applicant has authority to pursue this Application.
10. The subject property is currently zoned R-1D.
11. Based on evidence in the record, it appears that there are no 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). Applicant asserts that there are special circumstances because of past platting actions taken by the owner of the Subject Property and the neighboring property at 7805 Aguila. It would appear that these platting actions are self-imposed. Also, Applicant does not demonstrate the assertion stated in Applicant's justification letter that "all lots that surround this area do not have a 45' landscape buffer" because of plats approved before 2019. It would appear that a mere plat approval (without further action to vest development rights) before a change to the setbacks by zone amendment would control in spite of that zone amendment.
12. Further, even if there were a special circumstance, the evidence does not demonstrate how such a circumstance would 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. Agent stated that Applicant would have to pay in the realm of \$10,000 to redesign house plans to build in accordance with the IDO. Given the overall development budget of the proposed construction, this amount does not appear to rise to the level of an extraordinary hardship.
13. Similarly, the evidence does not establish that the proposed variance is the minimum necessary to avoid extraordinary hardship or practical difficulties as required by Section 14-16-6-6(O)(3)(a)(5). At the January 17, 2024 hearing, the ZHE inquired whether the home could be constructed closer to the front property line, given that the site plans showed a good deal of unused space between the proposed location of the home and the front yard setback. The ZHE inquired whether massing the home square footage toward the front yard setback would yield more space in the back sufficient to comply with the 45' setback requirement. Agent responded that such a change would require an architectural redesign costing in the realm of \$10,000 to redesign house plans, as cited, above. It is therefore uncertain why a same sized house could not be constructed closer to the front yard, or why a smaller house could not be constructed, in either case requiring a smaller, or no, variance.
14. Because all prongs of the variance test must be satisfied and, as stated above, the Application failed to satisfy the above-stated prongs of the test, the Application must be denied.
15. Out of considerations of administrative and quasi-judicial economy, the ZHE will not summarize any analysis of the remaining prongs of the test in this Notification of Decision.

DECISION:

DENIAL of a variance of 30 ft to the required 45 ft open space landscape buffer.

APPEAL:

If you wish to appeal this decision, you must do so by February 15, 2024 pursuant to Section 14-16-6-4(V), 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.



---

Robert Lucero, Esq.  
Zoning Hearing Examiner

cc:

ZHE File  
Zoning Enforcement  
Jane Beckley, Santa Fe Village Neighborhood Association





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	Decisions Requiring a Public Meeting or Hearing	Policy Decisions
<input type="checkbox"/> Archaeological Certificate (Form P3)	<input type="checkbox"/> Site Plan – EPC including any Variances – EPC (Form P1)	<input type="checkbox"/> Adoption or Amendment of Comprehensive Plan or Facility Plan (Form Z)
<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 Historic Designation (Form L)
<input type="checkbox"/> Alternative Signage Plan (Form P3)	<input type="checkbox"/> Historic Certificate of Appropriateness – Major (Form L)	<input type="checkbox"/> Amendment of IDO Text (Form Z)
<input type="checkbox"/> Alternative Landscape Plan (Form P3)	<input type="checkbox"/> Demolition Outside of HPO (Form L)	<input type="checkbox"/> Annexation of Land (Form Z)
<input type="checkbox"/> Minor Amendment to Site Plan (Form P3)	<input type="checkbox"/> Historic Design Standards and Guidelines (Form L)	<input type="checkbox"/> Amendment to Zoning Map – EPC (Form Z)
<input type="checkbox"/> WTF Approval (Form W1)	<input type="checkbox"/> Wireless Telecommunications Facility Waiver (Form W2)	<input type="checkbox"/> Amendment to Zoning Map – Council (Form Z)
		<b>Appeals</b>
		<input checked="" type="checkbox"/> Decision by EPC, LC, ZHE, or City Staff (Form A)

**APPLICATION INFORMATION**

Applicant: <u>Joe R. Romero</u>		Phone: <u>505 730 6527</u>
Address: <u>12412 Conejo Rd NE</u>		Email: <u>albuquerqueprize@gmail.com</u>
City: <u>Albuquerque</u>	State: <u>NM</u>	Zip: <u>87123</u>
Professional/Agent (if any): <u>Yolanda Montoya</u>		Phone: <u>505 264 2610</u>
Address: <u>8724 Alameda Park NE suite G</u>		Email: <u>londie.mo4@gmail.com</u>
City: <u>Albuquerque</u>	State: <u>NM</u>	Zip: <u>87113</u>
Proprietary Interest in Site: <u>7805/7809 Aguila Street NW</u>		List all owners: <u>Joe R. Romero</u>

**BRIEF DESCRIPTION OF REQUEST**

Appeal for VA-2023-00365, VA-2023-00366

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

Lot or Tract No.: <u>8-A-1, 8-A-2</u>	Block: <u>2</u>	Unit: <u>19</u>
Subdivision/Addition: <u>Volcano Cliffs</u>	MRGCD Map No.:	UPC Code: <u>101006330014140929</u>
Zone Atlas Page(s): <u>D-10</u>	Existing Zoning: <u>R-1D</u>	Proposed Zoning: <u>R-1D</u>
# of Existing Lots: <u>2</u>	# of Proposed Lots: <u>2</u>	Total Area of Site (acres): <u>0.71</u>

**LOCATION OF PROPERTY BY STREETS**

Site Address/Street: 7805/7809 Aguila St Between: Aguila Street and: Camino Del Oeste St NW

**CASE HISTORY (List any current or prior project and case number(s) that may be relevant to your request.)**

VA2023-00365 / VA2023-00366

Signature:	Date: <u>2/2/2024</u>
Printed Name: <u>Yolanda Montoya</u>	<input type="checkbox"/> Applicant or <input checked="" type="checkbox"/> Agent

**FOR OFFICIAL USE ONLY**

Case Numbers	Action	Fees	Case Numbers	Action	Fees

Meeting/Hearing Date:	Fee Total:
Staff Signature:	Date:
	Project #



**FORM A: Appeals**

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

- 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: \_\_\_\_\_

\_\_\_ A Single PDF file of the complete application including all documents being submitted must be emailed to [PLNDRS@cabq.gov](mailto: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. 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*.

\_\_\_ Project number of the case being appealed, if applicable: PR# 2023-009650, PR# 2023-009649

\_\_\_ Application number of the case being appealed, if applicable: VA-202300366, VA-2023-00365


\_\_\_ Type of decision being appealed: Variance Request/Denial

\_\_\_ 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(V)(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(V)(4)

\_\_\_ Copy of the Official Notice of Decision regarding the matter being appealed

<p><i>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.</i></p>	
<p>Signature: <u><i>Yolanda Montoya</i></u></p>	<p>Date: <u>2/2/24</u></p>
<p>Printed Name: <u>Yolanda Montoya</u></p>	<p><input type="checkbox"/> Applicant or <input checked="" type="checkbox"/> Agent</p>
<p><b>FOR OFFICIAL USE ONLY</b></p>	
<p>Case Numbers: _____</p>	<p>Project Number: _____</p>
<p>Staff Signature: _____</p>	
<p>Date: _____</p>	



# Project Numbers of Case being appealed

RP# 2023-009650

RP# 2023-009649

Application numbers of the case  
being appealed

VA-2023-00365

VA 2023-00366

Type of decision being appealed:

Denial of Variance Request  
To a 45' Landscape Buffer

To Whom it May Concern,

Please allow Yolanda Montoya of  
8724 Alameda Park NE Suite G,  
Albuquerque, NM 87113 to act  
on my <sup>be</sup> half, as my agent for  
the appeal of VA-2023-00365/VA-2023-00366.  
If you have any questions, please  
feel free to reach out to me at  
8057306527.

Thank You,



Joe Romero,  
Property Owner



Basis of standing in accordance with IDO Section 14-16-6-4(v)(2)

Any party appealing either of the following decisions: a. Declaratory Ruling. b. Adoption or Amendment of Albuquerque/Bernalillo County Comprehensive Plan.

Reason for Appeal:

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

The adoption of the 45' landscape buffer was never explained or revealed to the owner at time of purchase of the lot. The owner was presented with a plat of the property which at the time of purchase was an extra-large lot. In the plat it doesn't show any reference to the 45' landscaping buffer. When the lot was looked up in the city Address Report showed lot as R1-D which show the required set back as 20' front, 10' side and 15' rear. The lot was purchased in 2021 by Joe Romero. Based off if what I can see in the city IDO it was last revised in 2018.



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

Joe Romero (Agent, Maia Martin)  
requests a variance of 9 ft 11 ½ inches to  
the required 45 ft open space landscape  
buffer for Lots 8-A-1 & 8-A-2, Block 2,  
Volcano Cliffs Unit 19, located at 7805  
Aguila ST NW, zoned R-1D [Section 14-  
16-5-2(J)(2)(a)(1)]

Special Exception No: ..... **VA-2023-00365**  
Project No: ..... **Project#2023-009649**  
Hearing Date: ..... 1-16-24  
Closing of Public Record: ..... 1-16-24  
Date of Decision: ..... 01-31-24

On the 16th day of January, 2024, Maia Martin, agent for property owner Joe Romero (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 9 ft 11 ½ inches to the required 45 ft open space landscape buffer (“Application”) upon the real property located at 7805 Aguila ST NW (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 9 ft 11 ½ inches to the required 45 ft open space landscape buffer.
2. The City of Albuquerque Integrated Development Ordinance, Section 14-16-6-6(O)(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.*
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  - (5) *The Variance approved is the minimum necessary to avoid extraordinary hardship or practical difficulties.*”
3. Applicant bears the burden of providing a sound justification for the requested decision, based on substantial evidence, pursuant to IDO Section 14-16-6-4(E)(3).

4. Applicant bears the burden of showing compliance with required standards through analysis, illustrations, or other exhibits as necessary, pursuant to IDO Section 14-16-6-4(E)(4).
5. Agent appeared at the ZHE hearing on this matter and gave evidence in support of the Application.
6. Applicant established that the proper "Notice of Hearing" signage was posted for the required time period.
7. Applicant established that all property owners and neighborhood association entitled to notice were notified of the Application.
8. Applicant established that proper notice was provided pursuant to IDO requirements.
9. Applicant has authority to pursue this Application.
10. The subject property is currently zoned R-1D.
11. Based on evidence in the record, it appears that there are no 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). Applicant asserts that there are special circumstances because of past platting actions taken by the owner of the Subject Property and the neighboring property at 7809 Aguila. It would appear that these platting actions are self-imposed. Also, Applicant does not demonstrate the assertion stated in Applicant's justification letter that "all lots that surround this area do not have a 45' landscape buffer" because of plats approved before 2019. It would appear that a mere plat approval (without further action to vest development rights) before a change to the setbacks by zone amendment would control in spite of that zone amendment.
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DECISION:

DENIAL of a variance of 9 ft 11 ½ inches to the required 45 ft open space landscape buffer.

APPEAL:

If you wish to appeal this decision, you must do so by February 15, 2024 pursuant to Section 14-16-6-4(V), of the Integrated Development Ordinance, you must demonstrate that you have legal standing to file an appeal as defined.

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Robert Lucero, Esq.  
Zoning Hearing Examiner

cc:

ZHE File  
Zoning Enforcement  
Jane Beckley, Santa Fe Village Neighborhood Association



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

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Special Exception No: ..... **VA-2023-00366**  
Project No:..... **Project#2023-009650**  
Hearing Date:..... 1-16-24  
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FINDINGS:

1. Applicant is requesting a variance of 30 ft to the required 45 ft open space landscape buffer.
2. The City of Albuquerque Integrated Development Ordinance, Section 14-16-6-6(O)(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:*
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11. Based on evidence in the record, it appears that there are no 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). Applicant asserts that there are special circumstances because of past platting actions taken by the owner of the Subject Property and the neighboring property at 7805 Aguila. It would appear that these platting actions are self-imposed. Also, Applicant does not demonstrate the assertion stated in Applicant's justification letter that "all lots that surround this area do not have a 45' landscape buffer" because of plats approved before 2019. It would appear that a mere plat approval (without further action to vest development rights) before a change to the setbacks by zone amendment would control in spite of that zone amendment.
12. Further, even if there were a special circumstance, the evidence does not demonstrate how such a circumstance would 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. Agent stated that Applicant would have to pay in the realm of \$10,000 to redesign house plans to build in accordance with the IDO. Given the overall development budget of the proposed construction, this amount does not appear to rise to the level of an extraordinary hardship.
13. Similarly, the evidence does not establish that the proposed variance is the minimum necessary to avoid extraordinary hardship or practical difficulties as required by Section 14-16-6-6(O)(3)(a)(5). At the January 17, 2024 hearing, the ZHE inquired whether the home could be constructed closer to the front property line, given that the site plans showed a good deal of unused space between the proposed location of the home and the front yard setback. The ZHE inquired whether massing the home square footage toward the front yard setback would yield more space in the back sufficient to comply with the 45' setback requirement. Agent responded that such a change would require an architectural redesign costing in the realm of \$10,000 to redesign house plans, as cited, above. It is therefore uncertain why a same sized house could not be constructed closer to the front yard, or why a smaller house could not be constructed, in either case requiring a smaller, or no, variance.
14. Because all prongs of the variance test must be satisfied and, as stated above, the Application failed to satisfy the above-stated prongs of the test, the Application must be denied.
15. Out of considerations of administrative and quasi-judicial economy, the ZHE will not summarize any analysis of the remaining prongs of the test in this Notification of Decision.

DECISION:

DENIAL of a variance of 30 ft to the required 45 ft open space landscape buffer.

APPEAL:

If you wish to appeal this decision, you must do so by February 15, 2024 pursuant to Section 14-16-6-4(V), 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.



---

Robert Lucero, Esq.  
Zoning Hearing Examiner

cc:

ZHE File  
Zoning Enforcement  
Jane Beckley, Santa Fe Village Neighborhood Association





Plan and as acceptable to the Open Space Division of the City Parks and Recreation Department.

5-2(J)(1)(c)

**Landscaping, Buffering, and Screening**

Development shall:

1. Use native and/or naturalized vegetation for landscaping materials.
2. Screen mechanical equipment pursuant to Subsection 14-16-5-6(G) (Screening of Mechanical Equipment and Support Areas).

5-2(J)(1)(d)

**Outdoor Lighting**

Development shall design lighting pursuant to Section 14-16-5-8 (Outdoor and Site Lighting).

5-2(J)(1)(e)

**Color**

1. Development shall limit the colors of exterior surfaces of structures, including but not limited to mechanical devices, roof vents, and screening materials, to those with light reflective value (LRV) rating between 20 percent and 50 percent.
2. Colors shall blend with the surrounding natural environment and generally include yellow ochres, browns, dull reds, and grey greens.
3. Trim materials on façades constituting less than 20 percent of the façade's opaque surface may be any color.

5-2(J)(1)(f)

**Signs**

1. Electronic signs are prohibited pursuant to Subsection 14-16-5-12(H)(2)(e).
2. Signage shall be located to minimize visibility from Major Public Open Space and designed pursuant to Subsection 14-16-5-12(E)(5) (Illumination and Motion).

**5-2(J)(2)****Lots Adjacent to Major Public Open Space**

In addition to the standards that apply within 330 feet in any direction of Major Public Open Space in Subsection 14-16-5-2(J)(1) above, the following standards apply to development on lots adjacent to Major Public Open Space, except when the subject property and Major Public Open Space are separated by a principal arterial or freeway, in which case only the provisions of Subsection 14-16-5-2(J)(1) apply.

5-2(J)(2)(a)

**Lots of Any Size**

Development on lots of any size adjacent to Major Public Open Space shall:

1. Be platted and/or designed to incorporate a single-loaded street between the Major Public Open Space and development, with access generally prohibited unless approved by the Open Space Division of the City Parks and Recreation Department. Where a single-loaded street is not

desired by the Open Space Division of the City Parks and Recreation Department, a landscape buffer with a minimum width of 45 feet may be substituted as approved by the Open Space Superintendent. Existing vegetation on the Official Albuquerque Plant Palette may count toward satisfying the requirements of Subsection 14-16-5-6(C)(2) (Minimum Landscape Area) with approval from the Open Space Superintendent. Plant selection and location is subject to approval by the Open Space Superintendent.

2. For cluster development and multi-family dwellings, locate at least 25 percent of common open space or ground-level usable open space to be contiguous with Major Public Open Space. These areas shall be made accessible from the remaining land via trails or sidewalks. Access to Major Public Open Space is only allowed if approved by the Open Space Division of the City Parks and Recreation Department.
3. Locate lower densities and less intense uses abutting the Major Public Open Space in any Mixed-use zone district.
4. Include a landscaped strip between off-street parking and the Major Public Open Space with a minimum width of 6 feet that varies in width to avoid the appearance of a hard, straight line. Plant selection shall include sufficient shrubs or trees to provide a visual barrier.
5. Limit height of site lighting luminaires to 20 feet.
6. Incorporate Crime Prevention through Environmental Design (CPTED) principles to deter crime and to facilitate security measures.
7. Manage stormwater per Subsection 14-16-5-4(H).
8. Design grading per Subsection 14-16-5-4(J).
9. Locate and design vehicle access, circulation, and parking per Subsection 14-16-5-5(F) (Parking Location and Design) and Subsection 14-16-5-6(F) (Parking Lot Landscaping).
10. Locate and design all walls, fences, retaining walls, and combinations of those site features facing the Major Public Open Space in compliance with all applicable standards in Section 14-16-5-7(E)(4) (Walls Adjacent to Major Arroyos or Major Public Open Space).
11. Prevent and mitigate construction impact per the DPM.

## 5-2(J)(2)(b)

**Lots 5 Acres or Greater**

Development on lots 5 acres or greater adjacent to Major Public Open Space shall:

1. Comply with the requirements of Subsection (a) above.
2. Not be located within 50 feet of the portions of Major Public Open Space with a steep slope, escarpment, wetland, and/or riparian area, except for any single-loaded street or

landscaped buffer required pursuant to Subsection 14-16-5-2(J)(2)(a)1.

3. Not create any material negative environmental impacts on the visual, recreational, or habitat values of the Major Public Open Space.
4. Locate and design vehicle access, circulation, and parking to minimize impact to Major Public Open Space.
5. Design grading and manage stormwater to minimize impact to Major Public Open Space.
6. Locate, design, and orient site lighting to be compatible with Major Public Open Space, including consideration of periphery lighting and lighting of any pedestrian access to Major Public Open Space that is acceptable to the Open Space Division of the City Parks and Recreation Department.
7. Design walls to balance the following needs as appropriate on a case-by-case basis:
  - a. Aesthetics that blend with the natural environment.
  - b. Safety and surveillance.
  - c. Screening and privacy.
8. Locate, design, and orient signage to minimize impact to the Major Public Open Space.
9. Be reviewed by the Environmental Planning Commission (EPC), pursuant to Subsection 14-16-6-6(J).
10. Have an approved Site Plan – EPC that meets conditions deemed necessary by the EPC to further compliance with the above standards to minimize impact on the Major Public Open Space and maximize compatibility of the proposed development prior to the submittal of any request for platting on the property.

5-2(J)(2)(c)

**Lots Adjacent to the Petroglyph National Monument**

Development on lots of any size adjacent to the Petroglyph National Monument shall:

1. Comply with the requirements of Subsections 14-16-5-2(J)(1) (Lots within 330 feet of Major Public Open Space) and 14-16-5-2(J)(2) (Lots Adjacent to Major Public Open Space) above regardless of the applicability of those provisions related to the location or size of the premises.
2. Comply with the applicable standards in Section 14-16-3-6(E) (Northwest Mesa Escarpment – VPO-2).
3. Comply with the WTF concealment requirements in Section 14-16-4-3(E)(12)(a).
4. Comply with the applicable wall design and materials standards in Section 14-16-5-7(E)(4) (Walls Adjacent to Major Arroyos or Major Public Open Space).

5. Comply with the applicable sign restrictions in Sections 14-16-5-12(G)(1)(e).

**5-2(K) PREVENTING AND MITIGATING CONSTRUCTION IMPACT**

See the DPM for standards.



For more details about the Integrated Development Ordinance visit: <http://www.cabq.gov/planning/codes-policies-regulations/integrated-development-ordinance>

## IDO Zone Atlas May 2018

**Albuquerque Geographic Information System**

**IDO Zoning information as of May 17, 2018**

**The Zone Districts and Overlay Zones  
are established by the  
Integrated Development Ordinance (IDO).**

25

Zone Atlas Page:  
**D-10-Z**

- Easement
- Escarpment
- Petroglyph National Monument
- Areas Outside of City Limits
- Airport Protection Overlay (APO) Zone
- Character Protection Overlay (CPO) Zone
- Historic Protection Overlay (HPO) Zone
- View Protection Overlay (VPO) Zone

Feet  
0 250 500 1,000





### Letter of Authorization

To: Zoning Hearing Examiner

Date: 12-7-2023


Description of Request:

~~Request for Varaince of 7805 Aguila street for single family home to encroach 10' into 45' landscape buffer. Request of varianfe for 7808 Aguila Street for single family jome to encroa~~

I, Joe R. Romero hereby authorize Maia Martin to act on my behalf in all matters relating to this application for Special Exception filed for my property located at 7805 Aguila Street NE, Albuquerque, NM 87120/7809 Aguila Street NE, ABQ, N. M 87120

Property Owner(s)\* Printed Name(s)  
Joe R Romero

Property Owner(s)\* Signature(s)

  
\_\_\_\_\_  
\_\_\_\_\_

Mailing Address 12412 Conejo Ct, Albuquerque, NM 87123

\* Where a property has more than one owner, all owners must consent in writing to the filing of the application or show proof of legal authority to act on behalf of the other owners. When the ownership status of some parties is unclear (as shown on a title abstract or title insurance commitment), the owner shall attest in writing that all of the property owners shown on a title abstract or title insurance commitment have been notified of the application in writing at their last known address as shown on the property tax records of Bernalillo County.

## Sanchez, Suzanna A.

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**From:** Sanchez, Suzanna A.  
**Sent:** Tuesday, December 5, 2023 10:38 AM  
**To:** maia@candelariahomes.com  
**Subject:** ZHE Information for 7809 Aguila St NW  
**Attachments:** 1. Letter to Neighborhood Association.pdf; VARIANCE JUSTIFICATION APRIL 2021.pdf  
**Importance:** High

Good morning,

Thank you for your ZHE Special Exception Request. Please request the neighborhood association representatives from the Office of Neighborhood Coordination using the following link, <https://www.cabq.gov/office-of-neighborhood-coordination/neighborhood-meeting-inquiry-sheet>.

**Fill in and forward the attached Letter to Neighborhood Association to the list of neighborhood association contacts.** It is recommended that the neighborhood associations be notified 45 days prior to application submittal. Per Section 14-16-6-4(C)(3) of the Integrated Development Ordinance, a meeting request must be sent to the 2 representatives of all applicable Neighborhood Associations via Certified Mail, return receipt requested, or via email. **(Please include project information such as renderings, a site plan and/or a photo in the notice).**

Please forward me the items below at your earliest convenience.

- Proof of email to the Neighborhood Association
- Justification Letter
- Photo of Property

If you have questions, please contact me.

Thank you,

*Suzie*



**SUZIE FLORES**

zhe administrative assistant

o 505.924.3894

e [suzannasanchez@cabq.gov](mailto:suzannasanchez@cabq.gov)

[cabq.gov/planning](https://cabq.gov/planning)

## Sanchez, Suzanna A.

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**From:** Office of Neighborhood Coordination  
**Sent:** Tuesday, December 5, 2023 12:41 PM  
**To:** maia@candelariahomes.com  
**Cc:** Sanchez, Suzanna A.  
**Subject:** 7809 Aguila St NW\_Neighborhood Meeting Inquiry Sheet Submission

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Dear Applicant:

As of Tuesday, December 5, 2023, there are **NO** neighborhood associations to notify. You will need to attach a copy of this e-mail from the Office of Neighborhood Coordination (ONC) to your application when you submit it to the Planning Department.

Please note that the ONC does not have any jurisdiction over any other aspect of your application beyond this neighborhood contact information. We can't answer questions about sign postings, pre-construction meetings, permit status, site plans, buffers, or project plans, so we encourage you to contact the Planning Department at: 505-924-3857 Option #1, e-mail: [devhelp@cabq.gov](mailto:devhelp@cabq.gov), or visit: <https://www.cabq.gov/planning/online-planning-permitting-applications> with those types of questions.

Thank you.



**Vanessa Baca**  
Manager

Office of Neighborhood Coordination (ONC) | City Council Department | City of Albuquerque  
(505) 768-3331 Office  
E-mail: [vanessabaca@cabq.gov](mailto:vanessabaca@cabq.gov)  
Website: [www.cabq.gov/neighborhoods](http://www.cabq.gov/neighborhoods)



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**From:** webmaster@cabq.gov <webmaster@cabq.gov>  
**Sent:** Tuesday, December 5, 2023 12:33 PM  
**To:** Office of Neighborhood Coordination <maia@candelariahomes.com>

**Cc:** Office of Neighborhood Coordination <onc@cabq.gov>

**Subject:** Neighborhood Meeting Inquiry Sheet Submission

**[EXTERNAL]** Forward to [phishing@cabq.gov](mailto:phishing@cabq.gov) and delete if an email causes any concern.

Neighborhood Meeting Inquiry For:

Zoning Hearing Examiner

If you selected "Other" in the question above, please describe what you are seeking a Neighborhood Meeting Inquiry for below:

Contact Name

maia martin

Telephone Number

5059167474

Email Address

[maia@candelariahomes.com](mailto:maia@candelariahomes.com)

Company Name

Company Address

601 menaul blvd ne unit 1303

City

albuquerque

State

NM

ZIP

87107

Legal description of the subject site for this project:

Lot 8-A-1 , unit 19 , block 2 of volcano cliffs

Physical address of subject site:

7809 Aguila St NW

Subject site cross streets:

Vista Del Prado/Aguila Street

Other subject site identifiers:

This site is located on the following zone atlas page:

D-10-Z

Captcha

x



**VARIANCE JUSTIFICATION LETTER - GENERAL**

Zoning Hearing Examiner  
City of Albuquerque  
600 2<sup>nd</sup> Street NW, 3<sup>rd</sup> Floor  
Albuquerque, NM 87102

RE: Request for Variance of Encroachment of 30" into 45' Landscape Buffer. 15' feet from back property line/back setbacks  
at 7809 Aguila Street NW, Albuquerque, NM 87120 (address of the subject property).

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. **PLEASE EXPLAIN:**  
Back in 2016 this lot was part of a consolidation plat which combined this lot with the lot next to it. In 2019, the IDO enforced a rule that all major open spaces must have 45' of landscape buffer to back of property. With this being said when I re-platted the land recently (Summer of 2023) and the 45' landscape buffer was made as part of the requirements for re-platted. I believe that since before 2016 they were individual lots with no landscape buffer, we should be able to go back to original plats from 2016 to avoid Landscape buffer to have a bigger.

2) The Variance will not be materially contrary to the public safety, health, or welfare **BECAUSE:**  
All Lots that surround this area do not have a 45' landscape buffer due to plats being from before 2019 before new ordinance was passed. Variance will not be contrary to public safety, health, or welfare.

3) The Variance does not cause significant material adverse impacts on surrounding properties or infrastructure improvements in the vicinity **BECAUSE:**  
As stated, prior to Re plat happened over the summer, this property did not have a landscape buffer.

4) The Variance will not materially undermine the intent and purpose of this IDO or the applicable zone district **BECAUSE:**  
This is zoned as R-1D so a single family dwelling will be built. 45' landscape buffer was not required for lots before Subdivision or prior to consolidation plat in 2016.

5) The Variance approved is the minimum necessary to avoid extraordinary hardship or practical difficulties **BECAUSE:**  
If Variance will provide hardship due to the fact that the 45' of landscape buffer at the back of property will make the buildable area very small and hard to fit a mid sized single family home.

Signature *Maia Martin* Date 12/05/2023





# CITY OF ALBUQUERQUE INVOICE

**MAIA MARTIN**

**6611 CUERVO PLACE**

Reference NO: VA-2023-00366

Customer NO: CU-177412006

<b>Date</b>	<b>Description</b>	<b>Amount</b>
12/07/23	2% Technology Fee	\$4.20
12/07/23	Application Fee	\$100.00
12/07/23	Facilitated Meeting Fee	\$50.00
12/07/23	Posted Sign Fee	\$10.00
12/07/23	Published Notice Fee	\$50.00

Due Date: **12/07/23**

Total due for this invoice:

**\$214.20**

Options to pay your Invoice:

1. Online with a credit card: <https://posse.cabq.gov/posse/pub/lms/Default.aspx>
2. In person: Plaza Del Sol, 600 2nd St. NW, Albuquerque, NM 87102

PLEASE RETURN THE BOTTOM PORTION OF THIS INVOICE NOTICE WITH PAYMENT



**City of Albuquerque**  
PO Box 1293  
Albuquerque, NM 87103

**Date:** 12/07/23  
**Amount Due:** **\$214.20**  
**Reference NO:** VA-2023-00366  
**Payment Code:** 130  
**Customer NO:** CU-177412006

MAIA MARTIN  
6611 CUERVO PLACE  
ALBUQUERQUE, NM 87120



130 0000VA20230036600102546719416173700000000000002142CU177412006

Dear Land Hearing Officer/ Or to whom it may concern,


We, the neighbors of the Volcano Cliffs, are writing this letter on behalf of our neighbor, Joe R. Romero, the owner of both addresses: 7809 Aguila St NW, Albuquerque, NM and 7805 Aguila St NW, Albuquerque, NM 87120. We have recently been enlightened about the complications going on about being able to build a single-family home that encroaches on the forty-five' Landscape buffer. We are happy to see the plat has been finalized re-establishing the original lot lines but now we understand another issue has developed over building a single-family home. We understand that the IDO went through a new policy back in 2021 adding a mandatory 45' landscape buffer to any lots that back to the Major Open Space. While we understand this ordinance was put into place to protect the Petroglyph National monument from anything that could cause materially, public safety and welfare, or environmental damage we believe being able to build these two- single family homes would not cause significant materially, public safety, or contrary to the public health. We also believe it will not undermine the intent and purpose of the IDO. This is said because of the fact that there are already several houses built on the backside of the major open space. Not only would this not cause damage to the surrounding areas, there would also be more growth and equity to our neighborhood which is always a positive. Please take this letter into consideration when making your decision.

Thank you,



Adan & Mikayla Candelaria

Owners of: 6611 Cuervo Place NW, Albuquerque, NM 87120



Vince and Erin Haslam

6427 Canavio Place NW, Albuquerque, NM 87120



Joseph Beauchamp and Crystal Trujillo

6605 Petirrojo Rd NW, Albuquerque, NM 87120

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Israel and Blanca Frias

6601 Petirrojo Rd NW, Albuquerque, NM 87120

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Doug and Cindy Tedstrom

6612 Papagayo Rd NW, Albuquerque, NM 87120

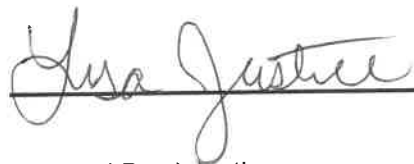
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Michelle Flores

6505 Petirrojo Rd NW, Albuquerque, NM 87120

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Lisa and Brad Justice

6536 Papagayo Rd NW, Albuquerque, NM 87120



**Hearing on Special Exceptions  
to the Integrated Development Ordinance**

**MINUTES**

**January 16, 2023  
600 2nd St NW, Albuquerque, NM 87102**

**CITY STAFF PRESENT:**

**Robert Lucero – Zoning Hearing Examiner  
Lorena Patten-Quintana – ZHE Planner, Planning Department  
William Foster – Hearing Monitor**

ZHE: And so we're going to proceed to agenda item 17, and that is VA 2023-00365, project number PR-2023-009649. Joe Romero through agent Maya Martin requests a variance of nine feet, 11 1/2 inches to the required 45 foot open space landscape buffer for lots 8A1 and 8A2, block two, volcano cliffs, unit 19, located at 7805 Aguilar Street Northwest, zone R1D. Do we have the agent or applicant here?

M. MARTIN: Yes, sir. I'm Maia Martin, the agent representing Mr. Joe Romero.

ZHE: Thank you, Ms. Martin. Please state your mailing address for the record.

M. MARTIN: My mailing address is 601 Menaul Boulevard, Northeast unit 1303, Albuquerque, New Mexico, 87107.

ZHE: Thank you, and please raise your right hand. And do you affirm under penalty of perjury that your testimony today will be true?

M. MARTIN: I do.

ZHE: Thank you. Go ahead, please tell me about this application.

M. MARTIN: Okay, would it be possible to share my screen?

ZHE: Yes, let's see if we can enable that. There we go, I can see it.

M. MARTIN: Okay, so this, my client, Joe Romero, purchased these lots back in 2015 or 2016 with the original plan of building a very large single family home. So he went through a consolidation plat which eliminated this lot line on the original lots. So this past summer, summer of 2023, I went through the DFT staff and applied for a subdivision because he never ended up building. So he wanted to replat the two back to the original and sell the lots individually. So single family homes could be built there. And so I got through my DFT meetings, I got everything approved, but one of the comments that I received was the 45 foot of landscape buffer from the Parks and Rec. And so on this survey, you can see that 45 foot of landscape buffer encroaches on the property quite a bit. So when I was going to pull building permits, I would just wanted to make sure all my bases were checked and zoning let me know that because of the landscape buffer that I would have to request a variance in order for each of the single family homes to encroach on the landscape buffer. So on lot 8A1, I have this single family home-

ZHE: Say, Ms. Martin, before you go any further, I know that there's different project numbers for agenda items 17 and 18, but does it make sense to hear them together?

M. MARTIN: Yeah, it makes a little more sense to hear them together.

ZHE: Okay, why don't we do that? And so let me just announce that. So for everyone in attendance, we commenced this discussion regarding agenda item 17, but we're also going to hear at the same time agenda item 18 and that is VA 2023-00366 project

number PR-2023-009650, Joe Romero through agent Maia Martin requests a variance of 30 feet to the required 45 foot open space landscape buffer for lot 8A1 block two volcano cliffs unit 19 located at 7809 Aguila street Northwest zoned R1D. And Ms. Martin has already been sworn in on this matter. Go ahead Ms. Martin.

M. MARTIN: Okay, so up here you can see this is lot 8A1 and the house that is planned to be built on this house is encroaching on the landscape buffer at 29 feet and 11 and a half inches. So the request would be to encroach with the single family home onto the landscape buffer, the 29 feet and 11 and a half inches in this site plan you can see where the, how much of the house encroaches in that landscape buffer. And then for lot 8A2, this is the single family dwelling that'll be that's planned to be built on this house. And this one doesn't encroach quite as much. This encroaches nine feet and one and a half inches. So it's less of an encroachment than the other single family home. And so my request to encroach on both of those landscape buffers, I've attached some elevation drawings of the house being built just in case any of the neighbors had any questions, I've attached floor plans. I heard from one neighbor and they were kind of just curious about the process because I guess they had bought another lot or they had bought a lot and they were wondering if they were gonna run into the same situation with the landscape buffer. But yeah, that's my reason for the variance request today.

ZHE: Okay. Would you go back to sort of those site plans that show the location of the proposed residences on the lots? Yeah, like in particular that one. I mean, just sort of playing devil's advocate. I mean, what if that whole back portion of the house was pushed up toward the front of the lot? I mean, there's this whole portion on the front of the lot that's undeveloped.

M. MARTIN: Yeah, so unfortunately according to the R1D setback requirements, your front setback is at 25 feet. So here I have my architect's label 25 feet. And so that's kind of my issue there. When I had first went into the city and talked to them about starting this process, they let me know that I might be able to, because it's a public road on that street, that I might be able to use part of that public road as my setback. But after speaking, I believe to transportation, they said that wasn't applicable.

ZHE: Okay. But I'm talking about sort of the area between the garage or sort of, is this oriented so that north is up?

M. MARTIN: Yes.

ZHE: So like south of the 25 foot setback and west of the garage, that area there where your terrorist is, why not put the massing of the house that's south of the buffer, why not put it up there and clear the buffer area out?

M. MARTIN: Before I had started the replats, we had already had these designs drawn for both houses. And so I have engineering and all my trust's engineering and all my stuff ready for building permits. And so that would probably set us back \$10,000 per house, at least by changing the plans. We already have some windows ordered on one of the houses. You're taking into consideration the architect fees, different types of surveying done for grading and drainage purposes, just little considerations like that. So yeah, we could shrink the house or

reorientate the house, but I'd rather take this time to try to request the variance instead of costing my clients and that for my client, another 10 to \$15,000 in redoing all of this.

ZHE: That would create an extraordinary hardship or potential limitation.

M. MARTIN: Yes, sir.

ZHE: Okay. All right. And same, what about with the other one? You know, that one has, could you show the other one? I mean, that one has even less of a setback.

M. MARTIN: Yeah, so this one's a little less. So you see here, I have the front setback here and then the same thing, the garage is in the front. And then this one's nine feet and one and a half inches. And so same thing, I have all my trust engineering, my structural engineering, those types of things.

ZHE: Okay. Tell me about the properties that are sort of on either side of yours. Are they built in compliance with the setbacks or what?

M. MARTIN: So they're actually empty lots. And I guess back in 2021, that's when, I don't know if it's the IDEO who put that into place, the landscape buffer. So anyone who purchased their land prior to 2021 and wasn't having any replanting issues, isn't required to follow the landscape buffer. So one of my original questions when I went in to talk about this matter, since the lot lines were reestablished in the exact same area, is if it was something that could be grandfathered since it's going back into like the original lot lines. And they let me know like that wasn't an option. So there's no houses around it yet. I'm sure if the owners had bought the lots around it prior to 2021 or didn't have any survey type of work, replating work prior to this, they wouldn't have the same issues.

ZHE: Okay. And tell me about the Petroglyphs National Monument. That's what borders the lots, right? But what does it look like on the other side of your lot line?

M. MARTIN: So right here, you can see where the landscape buffer is. There's about a 10 foot of like a public trail. And then about 10 feet after that public trail, the National Monument starts and it's just the Petroglyphs.

ZHE: Okay. So it gets pretty steep, pretty fast.

M. MARTIN: It gets pretty steep, yes, sir.

ZHE: Okay. Okay. All right. Anything else that you'd like to add before I call for public comment?

M. MARTIN: No, sir.



ZHE: Okay. I recognize a lot of what you showed on screen, but if there's anything that you showed on screen that is not in the record yet, would you please email it to our office by this Friday?

M. MARTIN: Yes, sir. I had sent this to Susie and-

ZHE: Oh, good. Yeah, I recognize the site plans. Thank you.

M. MARTIN: Everything's on record. I don't think I have anything else to provide-

ZHE: Okay.

M. MARTIN: As far as the request.

ZHE: Very good. Well, thank you. Well, let's see if there's any public comments and then if so, you'll have the chance to respond. And so for everyone here today, these are agenda items 17 and 18 being heard together and their requests for setbacks. I'm sorry, the request for variances from the open space landscape buffers at 7805 and 7809 Aguilar Street, respectively. And let's see, I see, let's see, Jane Baechle with the hand raised, are you there?

J. BAECHLE: I am, thank you.

ZHE: Thank you. Would you please state your full name and mailing address for the record?

J. BAECHLE: So it's Jane Baechle. The address is 7021 Lamar Avenue Northwest, 87120.

ZHE: Thank you and please raise your right hand. Do you affirm under penalty of perjury that your testimony today will be true?

J. BAECHLE: I do.

ZHE: Thank you, go ahead.

J. BAECHLE: Okay, so I did send in a letter and I wanna start by affirming that members of the Santa Fe Village Neighborhood Association Board continue to endorse our position regarding requests for variances against the major public open space and the Petroglyph Monument. In my letter, I referenced two things. I briefly described my experience of going to the site to be able to visualize what it actually looked like. And at that time, the sign was literally in the street, the yellow sign notifying this hearing. But fundamentally, the basis of our opposition is our view that major public open space, in particular, the Petroglyph Monument should be protected as outlined in the IDEO standards regarding sensitive lands. The entirety of the Petroglyph Monument and in that area, the trail that is described as a few feet from the boundary is in fact, all of that land is in the monument. The trail that people walk regularly, as well as the area between the trail and this property line are all within the monument boundary. And this is a significant natural and cultural resource that belongs to the people of the United States actually, but its benefits are expected to accrue to all of the people of Albuquerque. And

in creating these provisions, the IDEO adheres to the goals and policies of the ABC Comp Plan, which mandate the protection of heritage landscapes. It's our view that these variances would materially damage the natural and cultural landscape adjacent to this property and materially undermine the IDEO protections that are written to protect major public open space and Petroglyph Monument. And finally, I wanna say again, something I know I've said before, and, you know, Santa Fe Village Neighborhood Association is not just sort of capriciously looking for opportunities to oppose variances. We are also virtually surrounded by the Petroglyph Monument and as an association uphold and support the IDEO provisions to protect that landscape. So thank you very much.

ZHE: Thank you, Ms. Beckley. All right. Very good. So I don't see anyone else in attendance who's a member of the public. And so Ms. Martin, you heard the public comment. Would you like to respond?

M. MARTIN: Yes, ma'am. Thank you, Jane, for your comment. I haven't received your letter yet, but I also haven't checked my mail probably since last Thursday, last Friday. So I apologize about that. But one thing you brought up, that it could materially damage the National Open Space, but I don't agree. There's already single family homes built adjacent to that National Monument. And in my opinion, one of the, one call that I told you about that I received, it was that by, the client had a question about the variance if they would run into the same problem as I did. And they, since they're custom built homes, I work for the contractor, the building contractor as well. I think that by building these homes, obviously it would kind of affect your views from the National Monument, but it would also be able to allow two families to be able to enjoy that space as their backyard and appreciate the monuments that are there and obviously add value to the neighborhood as an entirety.

ZHE: Okay. All right. Very, very interesting. Definitely a lot of considerations. So I appreciate all of the testimony and evidence, all the submittals, both from the applicant and community members. So Ms. Martin, you're saying you didn't get a copy of Ms. Beckley's letter. Did you get a copy of the letter from the National Park Service?

M. MARTIN: You know, I'd have to go, after this meeting, I'm gonna go check my mail because I haven't checked it since last week. Like I said, I was kind of late on the, sending out the letter. I think I sent it out Monday and I had to have it out by Wednesday. So since I sent it out, I haven't got a chance to check my mail, but when I check my mail, I will respond to Ms. Jane Beckley and address those concerns with her and see if it's something that can be handled either through a facilitated meeting or between us, just to address her concerns and kind of put her at ease with her concerns.

ZHE: Yeah, would you like me to defer decision on these to next month to allow for you to, you know, review those letters and respond on the record and, you know, hold any meetings or facilitations?

M. MARTIN: You know, I started this whole process back in May. So it's been a while. So I would rather not defer if possible. I would try, I would like to have this facilitated meeting or whatever needs to happen to make them feel better about the request prior to that.

ZHE: And what about the notice sign? Ms. Beckley had submitted a photo of the notice sign on the ground and testified that to the same, are you aware of that? Or, you know, was that just sort of like one afternoon it was down and then it was put immediately back up? Or do you know what the status of the notice sign was?

M. MARTIN: No, sir. I submitted those, I had the signs posted. Let me see, I take a picture. I posted those signs December 29th. And as you know, everyone's kind of off work for the holidays and the weather was bad. And up here in the petroglyphs, there's a lot of wind. And I believe the sign postage just flew off. I don't have a problem going back down to the city and picking up more signs and trying to reinforce it better. But that was never my intention to just leave it.

ZHE: Okay. All right, well, thanks again, everybody for the submittals and the testimony. You've given me a lot to consider. I will take everything under consideration and issue the written decision in 15 days.

M. MARTIN: Perfect, thank you so much.

ZHE: Thank you.

***Planning Department***  
***Alan Varela, Planning Director***

***Development Review Division***

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Albuquerque, NM 87102

**NOTICE OF APPEAL**

February 21, 2024

**TO WHOM IT MAY CONCERN:**

The Planning Department received an appeal on February 20, 2024. 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 Ernesto Alfredo Salas, Sr. 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 Michelle Montoya, Clerk to the Council, (505) 768-3100.

**CITY COUNCIL APPEAL NUMBER: AC-24-10**  
**PLANNING DEPARTMENT CASE FILE NUMBER:**  
**PR-2023-009649, VA-2023-00366, VA-2024-00034**

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ZHE File