



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

Michael Winkeljohn requests a variance of 12 ft to the allowed max 30 ft building height for Lot 8-9, Martineztown Phase 7, located at 301 Martin Luther King Ave NE, zoned MX-T [Section 14-16-5-1(D)]

Special Exception No:**VA-2018-00072**
Project No:**Project# 2018-001425**
Hearing Date:.....09-18-18
Closing of Public Record:.....09-18-18
Date of Decision:10-03-18

On the 18th day of September, 2018, James Green Architects, agent for property owner Michael Winkeljohn (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 12 ft to the allowed max 30 ft building height (“Application”) upon the real property located at 301 Martin Luther King Ave NE (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 12 ft to the allowed max 30 ft building height.
2. The City of Albuquerque Integrated Development Ordinance, Section 14-16-6-6(N)(3)(a) (Variance-Review and Decision Criteria) reads: “... an application for a Variance-ZHE shall be approved if it meets all of the following criteria: *(1) There are special circumstances applicable to the subject property which do not apply generally to other property in the same zone and vicinity such as size, shape, topography, location, surroundings, or physical characteristics created by natural forces or government action for which no compensation was paid. Such special circumstances of the property either create an extraordinary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the property, or practical difficulties result from strict compliance with the minimum standards. (2) The Variance will not be materially contrary to the public safety, health, or welfare. (3) The Variance does not cause significant material adverse impacts on surrounding properties or infrastructure improvements in the vicinity. (4) The Variance will not materially undermine the intent and purpose of the IDO or the applicable zone district. (5) The Variance approved is the minimum necessary to avoid extraordinary hardship or practical difficulties.*”
3. The Applicant bears the burden of ensuring there is evidence in the record supporting a finding that the above criteria are met under Section 14-16-6-4-(F)(2).
4. All property owners within 100 feet of the subject property and the affected neighborhood association were notified.
5. The Citizens Information Committee of Martineztown, Silver Platinum Downtown NA, Broadway Central Corridors Partnership, Inc., and Huning Highland Historic District Association are the affected neighborhood associations.
6. The subject property is currently zoned M-XT.
7. Nothing was submitted in opposition to the application.
8. The subject building was originally used as a Department of Defense facility.

9. It was converted in 2016 to the Jackson Winkle Academy to train professional fighters.
10. The proposed project will be an expansion to create living quarters for students of the Academy.
11. The proposed apartments will be on the roof of the existing building.
12. There are no land requirements as the proposed project will be placed within the existing footprint of the existing building.
13. Students of the Academy will be able to live and work in the same building, which will prevent any added traffic, parking congestion caused by the expansion.
14. 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 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.14-16-4-6(N)(3)(a)(1).
15. The variance will not be contrary to the public safety, health and welfare of the community as required by Section 14-16-6(N)(3)(a)(2).
16. 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(N)(3)(a)(3).
17. 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).
18. 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).
19. The special circumstances were not self-imposed and create an unnecessary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the property that need not be endured to achieve the intent and purpose IDO.
20. The proper “Notice of Hearing” signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
21. The Applicant has authority to pursue this Application.

CONCLUSIONS OF LAW:

The criteria within Section 14-16-6-6(N)(3)(c) of the City of Albuquerque Integrated Development Ordinance are satisfied.

DECISION:

APPROVAL of a variance of 12 ft to the allowed max 30 ft building height.

If you wish to appeal this decision, you must do so by October 18, 2018 in the manner described below. A non-refundable filing fee will be calculated at the Planning

Department's Land Development Coordination counter and is required at the time the Appeal is filed.

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

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

The LUHO shall then schedule a hearing on the matter within 30 consecutive days of receipt and notify the parties, pursuant to Section 14-16-6-4(U)(3)(d).

The Planning Department shall give written notice of an appeal, together with a notice of the date, time and place of the hearing to the applicant, a representative of the opponents, if any are known, and the appellant.

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

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

Successful applicants are reminded that other regulations of the City must be complied with, even after approval of a special exception is secured. This decision does not constitute approval of plans for a building permit. If your application is approved, bring this decision with you when you apply for any related building permit or occupation tax number. Approval of a conditional use or a variance application is **void after one year** from date of approval if the rights and privileges are granted, thereby have not been executed or utilized.



Stan Harada, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
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