



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

Michael Keefe requests a variance of 25% to the required 30% of clear transparent windows on second floor facade facing 4th Street for Lot 86, Los Alamos Addn, located at 321 Sandia RD NW, zoned MX-T [Section 14-16-5-11(E)(2)(b)2]

Special Exception No:..... **VA-2019-00123**  
Project No: ..... **Project# 2019-002281**  
Hearing Date: ..... 05-21-19  
Closing of Public Record: ..... 05-21-19  
Date of Decision: ..... 06-05-19

On the 21st day of May, 2019, Roger Cinelli, agent for property owner Michael Keefe (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 25% to the required 30% of clear transparent windows on second floor facade facing 4th Street (“Application”) upon the real property located at 321 Sandia RD NW (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 25% to the required 30% of clear transparent windows on second floor facade facing 4th Street.
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. The variance is requested from Development Standard Section 14-16-5-11(E)(2)(b).2, (*Façade Design*), which requires “Each second floor and higher façade facing a public street or alley shall contain a minimum of 30 percent of its surfaces in clear, transparent windows and/or doors.”
5. 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).
6. Roger Cinelli, agent for Michael Keefe, property owner appeared and gave evidence in support of the application.
7. A site plan with accompanying photographs of the subject site 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. Los Alamos Addition Neighborhood Association and Gavilan Neighborhood Association are the affected neighborhood associations.
10. The Applicant conducted a pre-application meeting with the LAANA, and the report of that meeting and results of that meeting are reported in Findings for the ZHE Hearing in VA-2019-00119.
11. The subject property is currently zoned MX-T.
12. The site is located on the northeast corner of 4th St NW and Sandia Road NW.
13. The current primary residential building on subject property is uninhabitable, blighted and has become a public nuisance.
14. The owner of the property proposes to remove the blighted building and to construct eight townhouses on the site.
15. The project would consist of two 4 unit townhouses built in a northern New Mexico architectural style oriented north and south on the site.
16. These units would be affordable rentals with strict standards applied to renters.
17. The adjacent neighborhood to the east is an eclectic neighborhood consistently of a great variety of architectural styles, including Territorial, Missions, Pueblo and Ranch.
18. There is no emphasis on a single architectural style and the proposed project would complement and enhance the character of the neighborhood and surrounding area.
19. Exceptional hardships are created by the façade regulations.
20. Section 14-16-5-11(E)(2)(b).2 (*Façade Design*) glazing requirements impose a regimen more appropriate for commercial developments with storefronts for display to a public street.
21. The percentage of glazing required could be contrary to the City enforced International Energy Conservation Code as applies to fenestration areas.
22. The percentage of required glazing is in excess of the minimum requirements in the International Residential Code.
23. The percentage of glazing required pose difficulty in maintaining privacy in tenant’s units.
24. The current required upper level glazing area poses an unnecessary hardship that would create great difficulty in a residential context.
25. 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).
26. The reduction in upper level glazing will provide privacy, safety and security for tenants.

27. The requested upper level glazing will provide natural light to habitable spaces.
28. The requested upper level glazing will comply with energy saving residential features.
29. The facades on most residents and commercial properties within the surrounding area are limited in size and are not to the area required by the Ordinance.
30. Those building with large glazing areas on their facades have added security bars for safety.
31. 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).
32. 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).
33. The glazing requirements expressed in the Ordinance are applicable to small scale office, institutional and pedestrian oriented commercial uses.
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. All e-mails, letters and testimony from persons in opposition have not addressed this request and no opposition was to the Application was submitted.
36. Transportation has reported No Objections to the Application.
37. 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).
38. The proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
39. The Applicant has authority to pursue this Application.

DECISION:

APPROVAL of a variance of 25% to the required 30% of clear transparent windows on second floor facade facing 4th Street.

APPEAL:

If you wish to appeal this decision, you must do so by June 20, 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.



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Stan Harada, Esq.  
Zoning Hearing Examiner

cc: Zoning Enforcement

ZHE File

Michael Keefe, 321 Sandia RD NW, 87107

Roger Cinelli, 2418 Manuel Torres Lane NW, 87107

Don Dudley, 302 Sandia NW, 87107

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