



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

Montgomery Place Church of God requests a variance to allow a building with a setback greater than the 15 ft maximum allowed for Lot G2B, Montgomery Complex located at 3601 Montgomery Blvd NW, zoned MX-M [Section 14-16-4-3(D)(17)(k)]

Special Exception No:..... **VA-2019-00327**
Project No: **Project#2019-002920**
Hearing Date: 11-19-19
Closing of Public Record: 11-19-19
Date of Decision: 12-04-19

On the 19th day of November, 2019, property owner Montgomery Place Church of God (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance to allow a building with a setback greater than the 15 ft maximum allowed (“Application”) upon the real property located at 3601 Montgomery Blvd NW (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance to allow a building with a setback greater than the 15 ft maximum allowed.
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 request is for a variance from Section 14-16-4-3(D)(17(k): **Use Regulations; Commercial Uses; Use-Specific Standards; Light Vehicle Fueling Station.**
5. This sub-Section states in part: “In . . . the MX-M zone District, any building containing a retail use with 1,000 square feet or more of gross floor area shall have a maximum setback of 15 feet.”
6. Ronald Bohannan at Tierra West, LLC, agent, for Maverick, Inc, operator, appeared and gave evidence in support of the application.
7. The address of the subject property is 3601 Montgomery Blvd. NE.
8. The subject property is currently zoned MX-M.
9. The subject property is located within an Area of Change as designated in the ABC Comp. Plan.
10. The subject property is located adjacent to a Residential zone district.
11. The proposed project is removal of the existing church buildings from the subject property and construction of a light vehicle fueling station.
12. The church is relocating to another location, which potentially may create instability in the area.
13. A preliminary site plan, zone map, survey and photographs of the area and existing buildings were submitted in support of the Application.
14. All property owners within 100 feet and affected neighborhood association(s) were notified.
15. The subject lot contains an existing public twenty foot wide Public Water Easement that is aligned along the property frontage of Montgomery Blvd.
16. In addition to the building footprint, there are associated mechanical, electrical and civil equipment around the building that cannot be installed on top of the existing waterline easement.
17. The easement prevents practical difficulties from strict compliance with the required setback.
18. The requested variance will allow the proposed project to comply with all use specific standards, including the building setbacks and landscape requirements contained in the IDO for an MX-M Zone District.
19. With all IDO regulations being met, the project will safeguard life, health and property and promote the public welfare and is not contrary to the public welfare and is not materially contrary to the community safety, health and welfare.
20. The site plan shows the primary store building will be oriented away from the residential area on the northerly end of the subject lot and all lighting will be contained upon the subject site.
21. There is an existing landscape barrier/buffer to the residential townhouse development to the north, which will remain.
22. The neighborhood issues of concern are addressed in the Notice of Decision in VA-2019-00326, the request for the Conditional Use.
23. Christy Hutchinson, manager for Maverick, the operator, gave testimony in support of the Application.
24. Rev. Richard Hutchins, 3601 Montgomery NE, pastor of the Church appeared and gave testimony in support of the Application.
25. He stated most of the Church congregation supports the Application.

26. He also stated most of the other business owners in this area, support the requested use.
27. Daniel Regan, 4109 Chama NE, Chairman of the zoning and development committee of the District 4 Coalition of Neighborhood Associations, appeared and gave testimony in partial opposition and partial support to the request.
28. The NA supports the Church being able to relate and continue its mission.
29. The subject property is located within a Major Transit Corridor.
30. The requested use will not create a significant adverse impact to adjacent properties as the site is zoned MX-M zone and is currently built out as commercial.
31. The use will replace the church building with an active business that will increase the viability and appearance of the area.
32. The project is designed with a 15-foot landscape strip between the building and parking and the residential zone for an additional buffer.
33. 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).
34. With the variance, the project will comply with all use specific standards, including building setbacks and landscaping requirements in the IDO for the MX-M zone district.
35. 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).
36. Surrounding properties to the west, include a car wash and a drive-thru bank, and the project will align appropriately with existing uses that share existing driveway access.
37. The project will replace the existing church building and utilize the existing driveway access points with no new access point proposed.
38. The project will replace the church building with minimal landscaping, with an active business that will increase the viability and appearance of the area.
39. There is no evidence of adverse impacts on surrounding properties or infrastructure improvements in the vicinity.
40. 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).
41. Montgomery Blvd. is a Major Transit Corridor, with the planning intent to develop the corridor with commercial and higher intensity projects.
42. The project will support a sustainable development pattern by encouraging density and growth along a Major Transit Corridor that already has the necessary infrastructure to support further infill development.
43. The request will protect the quality and character of residential neighborhoods; provide for the efficient administration of land use and development regulations in the City; protect the health, safety and welfare of the public; and ensure development in the City is consistent with the spirit and intent of the IDO.
44. 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).

45. The variance to the setback requirement will allow the site to be developed in a way that avoids impact to the existing public water utility easement.
46. 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).
47. The ZHE finds that the proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
48. The ZHE finds that the Applicant has authority to pursue this Application.

CONCLUSIONS OF LAW:

The criteria within Section 14-16-6-6(N)(3)(a) of the IDO are satisfied.

DECISION:

APPROVAL of a variance to allow a building with a setback greater than the 15 ft maximum allowed.

APPEAL:

If you wish to appeal this decision, you must do so by December 19, 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:

ZHE File
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