



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

Chris Casaus - RCA Investments LLC requests a variance of 26% to the required 30% second floor clear transparent window/door surfaces for Lot 6, Block 2, New Bridge Acres Addn, located at 142 Atrisco DR SW, zoned MX-L [Section 14-16-5-11-E-2-B]

Special Exception No:..... **VA-2019-00346**
Project No: **Project#2019-002944**
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 Chris Casaus - RCA Investments LLC (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 26% to the required 30% second floor clear transparent window/door surfaces (“Application”) upon the real property located at 42 Atrisco DR SW (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 26% to the required 30% second floor clear transparent window/door surfaces.
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. Jonathan Turner of Garcia/Kraemer & Associates, agent for RCA Investments, LLC., property owners, appeared and gave evidence in support of the application.
5. The address of the subject property is 142 Atrisco Dr. SW.

6. The subject property is currently zoned MX-L.
7. The request is for a variance from Section 14-16-5-11(E)(1): **DEVELOPMENT STANDARDS; Multi-family Residential Development; Building Design; Mixed-Use and Non-Residential Zone Districts: Ground Floor Height:** which states in part:

“In any Mixed-use Zone district in UC-MS-PT areas, the ground floor of primary buildings for development other than low density residential development shall have a minimum height of 12 feet”.

8. All property owners within 100 feet of the subject property and the affected neighborhood association were notified.
9. Vecinos Del Bosque Neighborhood Association and South West Alliance of Neighborhoods (SWAN) and Westside Coalition of Neighborhood Associations and South Valley Coalition of Neighborhood Associations are the affected neighborhood associations.
10. The neighborhood associations were notified by e-mail dated August 20, 2019.
11. No response nor request for meeting has been submitted.
12. The request is for a variance of 4 feet to the required 12 feet.
13. A site plan, with detailed drawings, elevations and construction drawing were submitted in support of the Application.
14. The subject site is located one block south of Central Ave. SW, due south of the Monte Carlo Liquors & Steak House, and across the street from Blake’s Lotaburger.
15. The site is surrounded on each side and to the rear by unincorporated (County) properties.
16. The subject property is located within an Area of Consistency, as designated in the ABC Comp. Plan.
17. The predominant zoning of adjacent properties is County, and to the north is a mix of older dwelling units and commercial uses.
18. A large cellular tower is in use and occupies the lot directly to the south of the subject property.
19. The site is currently vacant.
20. The previous use of the property was a substandard single-family home, which the City condemned and order demolished.
21. The house has been demolished and the debris and trash have been removed.
22. The new IDO MX-L zone district does not allow single-family detached homes.
23. The proposed project is construction of a new 12 unit affordable apartment units for the surrounding community and area.
24. The subject property is located within the Premium Transit Corridor, and on the outer edge of the Main Street Corridor and the major Transit Corridor.
25. As a result of this location, many building and design form regulations of the IDO have become applicable to the proposed project.
26. These required form-based design regulations make it difficult to design a building for residential use without making it less energy efficient, less private, less functional as living space, and less desirable to live in.
27. Multi-family development is a permissive use in the MX-L Zone district.
28. Minimum standard building design for main Street, Premium Transit, and Major Transit Corridor properties is in direct conflict with smart building design for residential use.

29. Applicant is seeking relief from the dimensional standards as listed, but also from a strict, literal application of standards in the IDO as it applies to residential building design.
30. Transportation issued a report indicating no opposition to the Application.
31. Ruben Martinez, 125 La Media SW, appeared and gave testimony in opposition to the Application.
32. His primary concerns are transient trespassing, traffic, noise, prostitution and criminal activity.
33. He does not feel the proposed project will help with any of these problems, but does not state any factors with the proposed project that would make these problems worse.
34. He also does not like the building being proposed is three stories tall.
35. Jose Lopez, 125 La Media SW, appeared and gave testimony in opposition to the Application.
36. He does not think that anyone would want to rent the apartments, due to the kennel next door having too many dogs which bark all the time.
37. He also feels the three-story building would ruin the privacy of other homes in the area.
38. The subject lot was platted by the City of Albuquerque prior to the enactment of City Zoning regulations of 1959.
39. The City of Albuquerque's Integrated Development Ordinance was adopted and became effective May, 2018, and imposed new and more restrictive standards on the subject property, for which no compensation was paid.
40. These IDO design regulations are mandatory without a variance, and are imposed by the subject property's location on the outer edges of three different and newly created "Corridors" within the City.
41. The subject property is in the middle and surrounded by County properties on all sides (except the Blake's Lotaburger across the street).
42. None of the abutting County parcels have a Zoning Code requirement for a ceiling height minimum, window/door glazing percentage minimum on street facing facades, or window sill height maximums.
43. The juxtaposition of the minimum building design requirements of the County and the specific, detailed and high standard building design from the City create a conflict that could produce undesirable development patterns that depart from the overall character of the neighborhood.
44. The subject property's location and surroundings make it unique and compared to other properties in the same zone district and vicinity.
45. 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).
46. The proposed project is an energy-efficient, affordable residential housing structure and will contribute to new urban growth and will help stabilize land use and property values for the neighborhood and surrounding community.
47. The project will minimize and help eliminate the negative effects of a vacant, public nuisance, and blighted property, currently attracting vagrants, litter, hazardous waste disposal and illegal dumping.

48. The project will increase public safety, health and welfare for the surrounding neighborhood and community as a whole.
49. 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).
50. There is no evidence of adverse impacts on surrounding properties or infrastructure improvements in the vicinity.
51. The project, will move families into a now vacant property, which will create increased demand for retail goods and services, generating more income and business for the nearby commercial establishments in the area.
52. 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).
53. 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.
54. 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).
55. Applicant will suffer economic hardship by trying to design a building that would be focused on commercial architectural design and aesthetics instead of his mission to provide affordable housing, through a smart residential building design, energy conservation and functionality of the dwelling units.
56. 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).
57. The proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
58. The Applicant has authority to pursue this Application.

CONCLUSIONS OF LAW:

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

DECISION:

APPROVAL of a variance of 26% to the required 30% Second Floor Clear Transparent Window/Door Surfaces.

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

Zoning Enforcement

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