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

Pulte Home of New Mexico, Inc. / Mr. David Newell (Agent, Jim Strozier, Consensus Planning) request an increase building height to 26 ft on a maximum of 67% of the building footprint for a variance of 17% to the 50% maximum allowed for Lot 38, Block 6, Volcano Cliffs Unit 18, located at 6619 Sujeto RD NW, zoned R-1D [Section 14-16-3-4-(M)(4)(b)]

Special Exception No:..... **VA-2020-00212**
Project No: ..... **Project#2020-004052**
Hearing Date: 08-18-20
Closing of Public Record: 08-18-20
Date of Decision: 09-02-20

On the 18th day of August, 2020, Jim Strozier, agent for property owners Pulte Home of New Mexico, Inc. / Mr. David Newell ("Applicant") appeared before the Zoning Hearing Examiner ("ZHE") requesting an increase building height to 26 ft on a maximum of 67% of the building footprint for a variance of 17% to the 50% maximum allowed ("Application") upon the real property located at 6619 Sujeto RD NW ("Subject Property"). Below are the ZHE's finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance to allow an increased building height to 26 ft on a maximum of 67% of the building footprint for a variance of 17% to the 50% 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. Agent for property owner appeared and gave evidence in support of the application.
5. Applicant and Agent have authority to pursue this Application.
6. Proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
7. Applicant failed to establish that 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 would be required under IDO Section 14-16-6-6(N)(3)(a). Specifically:
    a. Evidence was submitted regarding basalt in the area:
        i. Applicant testified that basalt exists on the subject property and on several lots in the surrounding area.
        ii. Apparently, several lots within Volcano Cliffs have basalt while other lots do not.
        iii. Opponents, including several neighbors who have built properties in the area, acknowledged the basalt is a problem throughout Volcano Cliffs.

        Given the pervasiveness of basalt in the surrounding area of Volcano Cliffs, basalt applies generally to other property in the vicinity, and basalt therefore does not constitute a special circumstance as would be required under IDO Section 14-16-6-6(N)(3)(a).
    b. Evidence was submitted regarding the size of the lot comprising the subject property:
        i. Applicant's justification letter states that the "primary special circumstance applicable to the subject properties is that they are extra-large residential lots."
        ii. Various maps and other written evidence indicate that the size of the subject lot is similar to that of surrounding lots and other lots in Volcano Cliffs.
        iii. Opponent neighbors testified that the subject lots were similar in size to neighboring lots in Volcano Cliffs.

        The relatively large residential lot size applies generally to other property in the vicinity, and therefore does not constitute a special circumstance as would be required under IDO Section 14-16-6-6(N)(3)(a).
8. Even if special circumstances were found to exist on the subject property, such special circumstances of the property neither create an extraordinary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the property, nor do practical difficulties result from strict compliance with the minimum standards.
    a. No extraordinary hardship exists, because many neighbors testified that they were able to develop their lots despite the purported problems with basalt and large lot size.
    b. No practical difficulties result from strict compliance with the minimum standards, because a house could be constructed within the existing building height and footprint parameters, as evidence by the fact that the vast majority of

houses in the area appear to comply with such requirements, as was testified by multiple neighbors.

c. While Applicant may not have a ready-made architectural product that satisfies the existing parameters of the IDO on this site, that does not mean that there exists a substantial and unjustified limitation on the reasonable use or return on the property. Rather, what Applicant designs or does not design would be a self-imposed limitation.

9. IDO Section 14-16-6-6(N)(3)(a) requires Applicant to establish a sound justification for all the criteria stated in that Section – if one criterion fails, the entire application must fail. As stated, above, Applicant has failed to satisfy the criterion set forth in IDO Section 14-16-6-6(N)(3)(a)(1). Therefore, the application must be denied. Given the denial on such grounds, the ZHE need not address the remaining criteria of IDO Section 14-16-6-6(N)(3)(a) or any other applicable criterion of approval.

DECISION:

DENIAL of a request for a variance to increase building height to 26 ft on a maximum of 67% of the building footprint for a variance of 17% to the 50% maximum allowed.

APPEAL:

If you wish to appeal this decision, you must do so by September 17, 2020 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.

Robert Lucero, Esq.
Zoning Hearing Examiner

cc:

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