



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

Speedy Finance, LLC DBA B&F Finance Albuquerque, LLC (Agent, Barnett Law Firm) request a variance of .9 miles to the 1 mile distance requirement from another small loan business for Lot B3, Block 62, Bel-Air, located at 3325 San Mateo Blvd NE, zoned MX-M [Section 14-16-4-3-D-22]

Special Exception No:..... **VA-2020-00414**  
Project No: ..... **Project#2020-004689**  
Hearing Date: ..... 12-15-20  
Closing of Public Record: ..... 12-15-20  
Date of Decision: ..... 12-30-20

On the 15th day of December, 2020, Barnett Law Firm, agent for property owner Speedy Finance, LLC DBA B&F Finance Albuquerque, LLC (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of .9 miles to the 1 mile distance requirement from another small loan business (“Application”) upon the real property located at 3325 San Mateo Blvd NE (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of .9 miles to the 1 mile distance requirement from another small loan business.
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 has authority to pursue this Application.

4. 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).
5. Applicant appeared and gave evidence in support of the application.
6. All property owners within 100 feet of the subject property and the affected neighborhood association were notified. Several neighbors submitted evidence and testimony in opposition to the Application on various grounds.
7. The subject property is currently zoned MX-M.
8. Applicant submits that the special circumstances justifying the variance are as follows:
  - a. Applicant needs to vacate its place of business of 3320 San Mateo Blvd NE, located approximately across the street from the Subject Property, because the owner of 3320 San Mateo has decided not to renew Applicant's lease.
  - b. Because of this non-renewal of Applicant's lease, Applicant needs to move and would like to move into and operate its small loan business in the Subject Property.
  - c. The Subject Property was previously used to house a small loan business other than Applicant, prior to that other business' apparent insolvency and ultimate failure, as a result of which the Subject Property has remained abandoned as a small loan business.
  - d. The Subject Property would therefore, according to Applicant, not increase the density of small loan businesses.
9. However, these conditions, while apparently unique, were not "created by natural causes or government action for which no compensation was paid," as is required by the IDO. Instead, the use or nonuse of properties as a small loan business are manmade circumstances. As such, the Application does not satisfy the requirement of special circumstances under the IDO.
10. Applicant has not established 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 required by Section 14-16-6-6(N)(3)(a)(1).
11. Given that the required element of special circumstances has not been satisfied, the variance must be denied, and it is therefore unnecessary to examine any other element required to establish a variance.
12. Nevertheless, the ZHE notes that the intent of the IDO is to limit the density of small loan businesses within the City. It appears that the several small loan businesses located within the 1 mile radius of the Subject Property were nonconforming uses if commenced prior to that 1 mile radius requirement. While a nonconforming use will be tolerated while continuing legally pursuant to the IDO, once a nonconforming use is abandoned, it generally cannot be reestablished. Here, the IDO states that "If a small loan business is abandoned, discontinued, or ceases operation for a period of 1 year, it shall not be reestablished at that location if it is within 1 mile of any other small loan business." (IDO Section 14-16-4-3(D)(22)(b)) .

DECISION:

DENIAL of a variance of .9 miles to the 1 mile distance requirement from another small loan business.

APPEAL:

If you wish to appeal this decision, you must do so by January 15, 2021 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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Robert Lucero, Esq.  
Zoning Hearing Examiner

cc:

ZHE File  
Zoning Enforcement  
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