



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

PULTE GROUP (CONSENSUS PLANNING, AGENT) requests a special exception to Section 14-16-2-23(A) and Page 58 NORTHWEST MESA ESCARPMENT PLAN & the site plan for subdivision: a VARIANCE of 1.3' to the required height in the site plan for subdivision of 17.7' to allow for a 19' height above natural grade for all or a portion of Lot 97, DEL WEBB@ MIREHAVEN PHASE 1B zoned SU-2 for PDA, located on 2105 GOOSE LAKE TRL NW (H-8)

Special Exception No:14ZHE-80349
Project No:Project# 1010319
Hearing Date:January 23, 2015
Closing of Public Record:January 23, 2015
Date of Decision:.....02-09-15

On the 23rd day of January, 2015 (hereinafter "**Hearing**") CONSENSUS PLANNING, (hereinafter "**Agent**") acting as agent on behalf of the property owner, PULTE GROUP (hereinafter "**Applicant**") appeared before the Zoning Hearing Examiner (hereinafter "**ZHE**") requesting a Variance of 1.3' to the required height in the site plan for subdivision of 17.7' to allow for a 19' height above natural grade (hereinafter "**Application**") upon the real property located at 2105 GOOSE LAKE TRL NW ("**Subject Property**"). Below are the findings of facts:

FINDINGS:

1. Applicant is requesting a Variance of 1.3' to the required height in the site plan for subdivision of 17.7' to allow for a 19' height above natural grade.
2. On November 14th, 2013, the EPC approved a Site Development Plan for Subdivision for this Subject Property. As part of the EPC request the Applicant asked for exceptions to the 15 foot height limitations on 38 of the 50 lots on the property, affected by the Northwest Mesa Escarpment Plan (NWMEP). The Applicant is requesting this variance from the NWMEP height restriction defied in the Design Overlay Zone Policy 12-2 of the NWMEP.
3. The EPC does not have the authority to grant this type of variance because the NWMEP provides this as a "dimensional standard" which requires an Application and consideration by the ZHE.
4. The City of Albuquerque Zoning Code of Ordinances Section § 14-16-4-2 (C) (2) "SPECIAL EXCEPTIONS – VARIANCE" reads in part: "*A variance application shall be approved by the Zoning Hearing Examiner, if and only if, the Zoning Hearing Examiner finds all of the following:*
 - (a) *The application is not contrary to the public interest or injurious to the community, or to property or improvements in the vicinity;*
 - (b) *There are special circumstances applicable to the subject property which 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:

(c) Such special circumstances were not self-imposed and create an unnecessary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the property that need not be endured to achieve the intent and purpose of the Zoning Code (§14-16-1-3) and the applicable zoning district; and

(d) Substantial justice is done.

5. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that the Application is not going to be: (i) contrary to the public interest, (ii) injurious to the community; or (iii) injurious to the property/improvements located in the nearby vicinity of the Subject Property. Specifically, the Applicant provided testimony that that these variance application from the height of the site are not injurious because they will allow the Applicant to develop a high quality “active living community that is part of a larger EPC approved Site Plan for the Mirehaven project [as required pursuant to Section § 14-16-4-2 (C) (2) (a)]. Further, the Application and testimony of the Applicant at the Hearing suggest that there is no neighborhood opposition to the Application.
6. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that there are “special circumstances” applicable to the Subject Property which do not apply generally to other property in the same zone and vicinity. Specifically, the Applicant provided testimony that the Subject Property has a number of physical characteristics that are special circumstances such as the property slopes down from west to east (topography), and the fact that the escarpment face is 1,400 feet from the property line and is approximately 40 feet higher than the elevation of the Subject Property [as required pursuant to Section § 14-16-4-2 (C) (2) (b)]
7. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that the special circumstances presented hereinabove were not “self-imposed”, and that those special circumstances create an unnecessary hardship upon the Applicant. Specifically, the Applicant provided testimony that if forced to comply with the strict requirements of the regulations that this entire Mirehaven project would be in jeopardy of not being built as planned, which constitutes an “unjustified limitation on the reasonable use of the Subject Property” [as required pursuant to Section § 14-16-4-2 (C) (2) (c)]
8. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that substantial justice will be done if this Application is approved. [as required pursuant to Section § 14-16-4-2 (C) (2) (d)]
9. Applicant testified at the Hearing that the yellow “Notice of Hearing” signs were posted for the required time period as articulated within City of Albuquerque Code of Ordinances § 14-16-4-2 (B) (4).

CONCLUSIONS OF LAW:

The Applicant has met their burden of submitting an Application that provides evidence that satisfies the elements required within §14-16-4-2 (C) (2) of the Albuquerque Zoning Code.

DECISION:

APPROVAL of a **VARIANCE** of of 1.3' to the required height in the site plan for subdivision of 17.7' to allow for a 19' height above natural grade.

If you wish to appeal this decision, you may do so by 5:00 p.m., on February 23, 2015 in the manner described below:

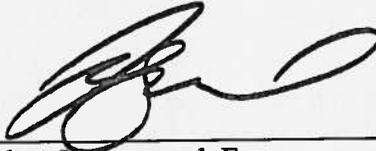
Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, Planning Application Counter located on the west side of the lobby. **Please present this letter of notification when filing an appeal.** When an application is withdrawn, the fee shall not be refunded.

An appeal shall be heard by the Board of Appeals within 45 days of the appeal period and concluded within 75 days of the appeal period. The Planning Division shall give written notice of an appeal, together with a notice of the date, time and place of the hearing to the applicant, a representative of the opponents, if any are known, and the appellant.

Please note that pursuant to Section 14. 16. 4. 4. (B), of the City of Albuquerque Comprehensive Zoning Code, you must demonstrate that you have legal standing to file an appeal as defined.

You will receive notice if any other person files an appeal. If there is no appeal, you can receive building permits any time after the appeal deadline quoted above, provided all conditions imposed at the time of approval have been met. However, the Zoning Hearing Examiner may allow issuance of building permits if the public hearing produces no objection of any kind to the approval of an application. To receive this approval, the applicant agrees in writing to return the building permit or occupation tax number.

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.



Joshua J. Skarsgard, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
Kevin Patton Pulte Group 7601 Jefferson NE Suite 320 Albuquerque NM 87109
James Strozier, Consensus Planning 302 8TH ST NW Albuquerque NM 87102



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

PULTE GROUP (CONSENSUS PLANNING, AGENT) requests a special exception to Section 14-16-2-23(A) and Page 58 NORTHWEST MESA ESCARPMENT PLAN & the site plan for subdivision: a VARIANCE of 1.4' to the required height in the site plan for subdivision of 17.6' to allow for a 19' height above natural grade for all or a portion of Lot 108, DEL WEBB@ MIREHAVEN PHASE 1B zoned SU-2 for PDA, located on 9335 IRON CREEK LA NW (H-8)

Special Exception No:.....14ZHE-80350
Project No:Project# 1010319
Hearing Date:January 23, 2015
Closing of Public Record:January 23, 2015
Date of Decision:.....02-09-15

On the 23rd day of January, 2015 (hereinafter "Hearing") CONSENSUS PLANNING, (hereinafter "Agent") acting as agent on behalf of the property owner, PULTE GROUP (hereinafter "Applicant") appeared before the Zoning Hearing Examiner (hereinafter "ZHE") requesting a Variance of 1.4' to the required height in the site plan for subdivision of 17.6' to allow for a 19' height above natural grade (hereinafter "Application") upon the real property located at 9335 IRON CREEK LA NW ("Subject Property"). Below are the findings of facts:

FINDINGS:

1. Applicant is requesting a Variance of 1.4' to the required height in the site plan for subdivision of 17.6' to allow for a 19' height above natural grade.
2. On November 14th, 2013, the EPC approved a Site Development Plan for Subdivision for this Subject Property. As part of the EPC request the Applicant asked for exceptions to the 15 foot height limitations on 38 of the 50 lots on the property, affected by the Northwest Mesa Escarpment Plan (NWMEP). The Applicant is requesting this variance from the NWMEP height restriction defied in the Design Overlay Zone Policy 12-2 of the NWMEP.
3. The EPC does not have the authority to grant this type of variance because the NWMEP provides this as a "dimensional standard" which requires an Application and consideration by the ZHE.
4. The City of Albuquerque Zoning Code of Ordinances Section § 14-16-4-2 (C) (2) "SPECIAL EXCEPTIONS – VARIANCE" reads in part: "A variance application shall be approved by the Zoning Hearing Examiner, if and only if, the Zoning Hearing Examiner finds all of the following:
(a) The application is not contrary to the public interest or injurious to the community, or to property or improvements in the vicinity;

- (b) There are special circumstances applicable to the subject property which 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;
- (c) Such special circumstances were not self-imposed and create an unnecessary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the property that need not be endured to achieve the intent and purpose of the Zoning Code (§14-16-1-3) and the applicable zoning district; and
- (d) Substantial justice is done.

5. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that the Application is not going to be: (i) contrary to the public interest, (ii) injurious to the community; or (iii) injurious to the property/improvements located in the nearby vicinity of the Subject Property. Specifically, the Applicant provided testimony that that these variance application from the height of the site are not injurious because they will allow the Applicant to develop a high quality “active living community that is part of a larger EPC approved Site Plan for the Mirehaven project [as required pursuant to Section § 14-16-4-2 (C) (2) (a)]. Further, the Application and testimony of the Applicant at the Hearing suggest that there is no neighborhood opposition to the Application.
6. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that there are “special circumstances” applicable to the Subject Property which do not apply generally to other property in the same zone and vicinity. Specifically, the Applicant provided testimony that the Subject Property has a number of physical characteristics that are special circumstances such as the property slopes down from west to east (topography), and the fact that the escarpment face is 1,400 feet from the property line and is approximately 40 feet higher than the elevation of the Subject Property [as required pursuant to Section § 14-16-4-2 (C) (2) (b)]
7. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that the special circumstances presented hereinabove were not “self-imposed”, and that those special circumstances create an unnecessary hardship upon the Applicant. Specifically, the Applicant provided testimony that if forced to comply with the strict requirements of the regulations that this entire Mirehaven project would be in jeopardy of not being built as planned, which constitutes an “unjustified limitation on the reasonable use of the Subject Property” [as required pursuant to Section § 14-16-4-2 (C) (2) (c)]
8. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that substantial justice will be done if this Application is approved. [as required pursuant to Section § 14-16-4-2 (C) (2) (d)]

9. Applicant testified at the Hearing that the yellow "Notice of Hearing" signs were posted for the required time period as articulated within City of Albuquerque Code of Ordinances § 14-16-4-2 (B) (4).

CONCLUSIONS OF LAW:

The Applicant has met their burden of submitting an Application that provides evidence that satisfies the elements required within §14-16-4-2 (C) (2) of the Albuquerque Zoning Code.

DECISION:

APPROVAL of a **VARIANCE** of 1.4' to the required height in the site plan for subdivision of 17.6' to allow for a 19' height above natural grade.

If you wish to appeal this decision, you may do so by 5:00 p.m., on February 23, 2015 in the manner described below:

Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, Planning Application Counter located on the west side of the lobby. **Please present this letter of notification when filing an appeal.** When an application is withdrawn, the fee shall not be refunded.

An appeal shall be heard by the Board of Appeals within 45 days of the appeal period and concluded within 75 days of the appeal period. The Planning Division shall give written notice of an appeal, together with a notice of the date, time and place of the hearing to the applicant, a representative of the opponents, if any are known, and the appellant.

Please note that pursuant to Section 14. 16. 4. 4. (B), of the City of Albuquerque Comprehensive Zoning Code, you must demonstrate that you have legal standing to file an appeal as defined.

You will receive notice if any other person files an appeal. If there is no appeal, you can receive building permits any time after the appeal deadline quoted above, provided all conditions imposed at the time of approval have been met. However, the Zoning Hearing Examiner may allow issuance of building permits if the public hearing produces no objection of any kind to the approval of an application. To receive this approval, the applicant agrees in writing to return the building permit or occupation tax number.

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.



Joshua J. Skarsgard, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
Kevin Patton Pulte Group 7601 Jefferson NE Suite 320 Albuquerque NM 87109
James Strozier, Consensus Planning 302 8TH ST NW Albuquerque NM 87102



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

PULTE GROUP (CONSENSUS PLANNING, AGENT) requests a special exception to Section 14-16-2-23(A) and Page 58 NORTHWEST MESA ESCARPMENT PLAN & the site plan for subdivision: a VARIANCE of 4' to the required height in the site plan for subdivision of 15' to allow for a 19' height above natural grade for all or a portion of Lot 109, DEL WEBB@ MIREHAVEN PHASE 1B zoned SU-2 for PDA, located on 9331 IRON CREEK LN NW (H-8)

Special Exception No:14ZHE-80351
Project No:Project# 1010319
Hearing Date:January 23, 2015
Closing of Public Record:January 23, 2015
Date of Decision:.....02-09-15

On the 23rd day of January, 2015 (hereinafter "Hearing") CONSENSUS PLANNING, (hereinafter "Agent") acting as agent on behalf of the property owner, PULTE GROUP (hereinafter "Applicant") appeared before the Zoning Hearing Examiner (hereinafter "ZHE") requesting a Variance of 4' to the required height in the site plan for subdivision of 15' to allow for a 19' height above natural grade (hereinafter "Application") upon the real property located at 9331 IRON CREEK LN NW ("Subject Property"). Below are the findings of facts:

FINDINGS:

1. Applicant is requesting a Variance of 4' to the required height in the site plan for subdivision of 15' to allow for a 19' height above natural grade.
2. On November 14th, 2013, the EPC approved a Site Development Plan for Subdivision for this Subject Property. As part of the EPC request the Applicant asked for exceptions to the 15 foot height limitations on 38 of the 50 lots on the property, affected by the Northwest Mesa Escarpment Plan (NWMEP). The Applicant is requesting this variance from the NWMEP height restriction defied in the Design Overlay Zone Policy 12-2 of the NWMEP.
3. The EPC does not have the authority to grant this type of variance because the NWMEP provides this as a "dimensional standard" which requires an Application and consideration by the ZHE.
4. The City of Albuquerque Zoning Code of Ordinances Section § 14-16-4-2 (C) (2) "SPECIAL EXCEPTIONS – VARIANCE" reads in part: "*A variance application shall be approved by the Zoning Hearing Examiner, if and only if, the Zoning Hearing Examiner finds all of the following:*
 - (a) *The application is not contrary to the public interest or injurious to the community, or to property or improvements in the vicinity;*
 - (b) *There are special circumstances applicable to the subject property which 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;

(c) Such special circumstances were not self-imposed and create an unnecessary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the property that need not be endured to achieve the intent and purpose of the Zoning Code (§14-16-1-3) and the applicable zoning district; and

(d) Substantial justice is done.

5. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that the Application is not going to be: (i) contrary to the public interest, (ii) injurious to the community; or (iii) injurious to the property/improvements located in the nearby vicinity of the Subject Property. Specifically, the Applicant provided testimony that that these variance application from the height of the site are not injurious because they will allow the Applicant to develop a high quality "active living community that is part of a larger EPC approved Site Plan for the Mirehaven project [as required pursuant to Section § 14-16-4-2 (C) (2) (a)]. Further, the Application and testimony of the Applicant at the Hearing suggest that there is no neighborhood opposition to the Application.
6. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that there are "special circumstances" applicable to the Subject Property which do not apply generally to other property in the same zone and vicinity. Specifically, the Applicant provided testimony that the Subject Property has a number of physical characteristics that are special circumstances such as the property slopes down from west to east (topography), and the fact that the escarpment face is 1,400 feet from the property line and is approximately 40 feet higher than the elevation of the Subject Property [as required pursuant to Section § 14-16-4-2 (C) (2) (b)]
7. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that the special circumstances presented hereinabove were not "self-imposed", and that those special circumstances create an unnecessary hardship upon the Applicant. Specifically, the Applicant provided testimony that if forced to comply with the strict requirements of the regulations that this entire Mirehaven project would be in jeopardy of not being built as planned, which constitutes an "unjustified limitation on the reasonable use of the Subject Property" [as required pursuant to Section § 14-16-4-2 (C) (2) (c)]
8. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that substantial justice will be done if this Application is approved. [as required pursuant to Section § 14-16-4-2 (C) (2) (d)]
9. Applicant testified at the Hearing that the yellow "Notice of Hearing" signs were posted for the required time period as articulated within City of Albuquerque Code of Ordinances § 14-16-4-2 (B) (4).

CONCLUSIONS OF LAW:

The Applicant has met their burden of submitting an Application that provides evidence that satisfies the elements required within §14-16-4-2 (C) (2) of the Albuquerque Zoning Code.

DECISION:

APPROVAL of a **VARIANCE** of 4' to the required height in the site plan for subdivision of 15' to allow for a 19' height above natural grade.

If you wish to appeal this decision, you may do so by 5:00 p.m., on February 23, 2015 in the manner described below:

Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, Planning Application Counter located on the west side of the lobby. **Please present this letter of notification when filing an appeal.** When an application is withdrawn, the fee shall not be refunded.

An appeal shall be heard by the Board of Appeals within 45 days of the appeal period and concluded within 75 days of the appeal period. The Planning Division shall give written notice of an appeal, together with a notice of the date, time and place of the hearing to the applicant, a representative of the opponents, if any are known, and the appellant.

Please note that pursuant to Section 14. 16. 4. 4. (B), of the City of Albuquerque Comprehensive Zoning Code, you must demonstrate that you have legal standing to file an appeal as defined.

You will receive notice if any other person files an appeal. If there is no appeal, you can receive building permits any time after the appeal deadline quoted above, provided all conditions imposed at the time of approval have been met. However, the Zoning Hearing Examiner may allow issuance of building permits if the public hearing produces no objection of any kind to the approval of an application. To receive this approval, the applicant agrees in writing to return the building permit or occupation tax number.

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.



Joshua J. Skarsgard, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File

Kevin Patton Pulte Group 7601 Jefferson NE Suite 320 Albuquerque NM 87109
James Strozier, Consensus Planning 302 8TH ST NW Albuquerque NM 8710



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

PULTE GROUP (CONSENSUS PLANNING, AGENT) requests a special exception to Section 14-16-2-23(A) and Page 58 NORTHWEST MESA ESCARPMENT PLAN & the site plan for subdivision: a VARIANCE of 4' to the required height in the site plan for subdivision of 15' to allow for a 19' height above natural grade for all or a portion of Lot 110, DEL WEBB@ MIREHAVEN PHASE 1B zoned SU-2 for PDA, located on 9327 IRON CREEK LN NW (H-8)

Special Exception No:14ZHE-80352
Project No:Project# 1010319
Hearing Date:January 23, 2015
Closing of Public Record:January 23, 2015
Date of Decision:.....02-09-15

On the 23rd day of January, 2015 (hereinafter "Hearing") CONSENSUS PLANNING, (hereinafter "Agent") acting as agent on behalf of the property owner, PULTE GROUP (hereinafter "Applicant") appeared before the Zoning Hearing Examiner (hereinafter "ZHE") requesting a Variance of 4' to the required height in the site plan for subdivision of 15' to allow for a 19' height above natural grade (hereinafter "Application") upon the real property located at 9327 IRON CREEK LN NW ("Subject Property"). Below are the findings of facts:

FINDINGS:

1. Applicant is requesting a Variance of 4' to the required height in the site plan for subdivision of 15' to allow for a 19' height above natural grade.
2. On November 14th, 2013, the EPC approved a Site Development Plan for Subdivision for this Subject Property. As part of the EPC request the Applicant asked for exceptions to the 15 foot height limitations on 38 of the 50 lots on the property, affected by the Northwest Mesa Escarpment Plan (NWMEP). The Applicant is requesting this variance from the NWMEP height restriction defied in the Design Overlay Zone Policy 12-2 of the NWMEP.
3. The EPC does not have the authority to grant this type of variance because the NWMEP provides this as a "dimensional standard" which requires an Application and consideration by the ZHE.
4. The City of Albuquerque Zoning Code of Ordinances Section § 14-16-4-2 (C) (2) "SPECIAL EXCEPTIONS – VARIANCE" reads in part: "A variance application shall be approved by the Zoning Hearing Examiner, if and only if, the Zoning Hearing Examiner finds all of the following:
(a) The application is not contrary to the public interest or injurious to the community, or to property or improvements in the vicinity;

(b) There are special circumstances applicable to the subject property which 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;

(c) Such special circumstances were not self-imposed and create an unnecessary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the property that need not be endured to achieve the intent and purpose of the Zoning Code (§14-16-1-3) and the applicable zoning district; and

(d) Substantial justice is done.

5. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that the Application is not going to be: (i) contrary to the public interest, (ii) injurious to the community; or (iii) injurious to the property/improvements located in the nearby vicinity of the Subject Property. Specifically, the Applicant provided testimony that that these variance application from the height of the site are not injurious because they will allow the Applicant to develop a high quality “active living community that is part of a larger EPC approved Site Plan for the Mirehaven project [as required pursuant to Section § 14-16-4-2 (C) (2) (a)]. Further, the Application and testimony of the Applicant at the Hearing suggest that there is no neighborhood opposition to the Application.
6. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that there are “special circumstances” applicable to the Subject Property which do not apply generally to other property in the same zone and vicinity. Specifically, the Applicant provided testimony that the Subject Property has a number of physical characteristics that are special circumstances such as the property slopes down from west to east (topography), and the fact that the escarpment face is 1,400 feet from the property line and is approximately 40 feet higher than the elevation of the Subject Property [as required pursuant to Section § 14-16-4-2 (C) (2) (b)]
7. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that the special circumstances presented hereinabove were not “self-imposed”, and that those special circumstances create an unnecessary hardship upon the Applicant. Specifically, the Applicant provided testimony that if forced to comply with the strict requirements of the regulations that this entire Mirehaven project would be in jeopardy of not being built as planned, which constitutes an “unjustified limitation on the reasonable use of the Subject Property” [as required pursuant to Section § 14-16-4-2 (C) (2) (c)]
8. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that substantial justice will be done if this Application is approved. [as required pursuant to Section § 14-16-4-2 (C) (2) (d)]
9. Applicant testified at the Hearing that the yellow “Notice of Hearing” signs were posted for the required time period as articulated within City of Albuquerque Code of Ordinances § 14-16-4-2 (B) (4).

CONCLUSIONS OF LAW:

The Applicant has met their burden of submitting an Application that provides evidence that satisfies the elements required within §14-16-4-2 (C) (2) of the Albuquerque Zoning Code.

DECISION:

APPROVAL of a **VARIANCE** of 4' to the required height in the site plan for subdivision of 15' to allow for a 19' height above natural grade.

If you wish to appeal this decision, you may do so by 5:00 p.m., on February 23, 2015 in the manner described below:

Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, Planning Application Counter located on the west side of the lobby. **Please present this letter of notification when filing an appeal.** When an application is withdrawn, the fee shall not be refunded.

An appeal shall be heard by the Board of Appeals within 45 days of the appeal period and concluded within 75 days of the appeal period. The Planning Division shall give written notice of an appeal, together with a notice of the date, time and place of the hearing to the applicant, a representative of the opponents, if any are known, and the appellant.

Please note that pursuant to Section 14. 16. 4. 4. (B), of the City of Albuquerque Comprehensive Zoning Code, you must demonstrate that you have legal standing to file an appeal as defined.

You will receive notice if any other person files an appeal. If there is no appeal, you can receive building permits any time after the appeal deadline quoted above, provided all conditions imposed at the time of approval have been met. However, the Zoning Hearing Examiner may allow issuance of building permits if the public hearing produces no objection of any kind to the approval of an application. To receive this approval, the applicant agrees in writing to return the building permit or occupation tax number.

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.



Joshua J. Skarsgard, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
Kevin Patton Pulte Group 7601 Jefferson NE Suite 320 Albuquerque NM 87109
James Strozier, Consensus Planning 302 8TH ST NW Albuquerque NM 87102



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

PULTE GROUP (CONSENSUS PLANNING, AGENT) requests a special exception to Section 14-16-2-23(A) and Page 58 NORTHWEST MESA ESCARPMENT PLAN & the site plan for subdivision: a VARIANCE of 4' to the required height in the site plan for subdivision of 15' to allow for a 19' height above natural grade for all or a portion of Lot 111, DEL WEBB@ MIREHAVEN PHASE 1B zoned SU-2 for PDA, located on 9323 IRON CREEK LN NW (H-8)

Special Exception No:.....14ZHE-80353
Project No:Project# 1010319
Hearing Date:January 23, 2015
Closing of Public Record:January 23, 2015
Date of Decision:.....02-09-15

On the 23rd day of January, 2015 (hereinafter "Hearing") CONSENSUS PLANNING, (hereinafter "Agent") acting as agent on behalf of the property owner, PULTE GROUP (hereinafter "Applicant") appeared before the Zoning Hearing Examiner (hereinafter "ZHE") requesting a Variance of 4' to the required height in the site plan for subdivision of 15' to allow for a 19' height above natural grade (hereinafter "Application") upon the real property located at 9323 IRON CREEK LN NW ("Subject Property"). Below are the findings of facts:

FINDINGS:

1. Applicant is requesting a Variance of 4' to the required height in the site plan for subdivision of 15' to allow for a 19' height above natural grade.
2. On November 14th, 2013, the EPC approved a Site Development Plan for Subdivision for this Subject Property. As part of the EPC request the Applicant asked for exceptions to the 15 foot height limitations on 38 of the 50 lots on the property, affected by the Northwest Mesa Escarpment Plan (NWMEP). The Applicant is requesting this variance from the NWMEP height restriction defied in the Design Overlay Zone Policy 12-2 of the NWMEP.
3. The EPC does not have the authority to grant this type of variance because the NWMEP provides this as a "dimensional standard" which requires an Application and consideration by the ZHE.
4. The City of Albuquerque Zoning Code of Ordinances Section § 14-16-4-2 (C) (2) "SPECIAL EXCEPTIONS – VARIANCE" reads in part: "*A variance application shall be approved by the Zoning Hearing Examiner, if and only if, the Zoning Hearing Examiner finds all of the following:*
(a) *The application is not contrary to the public interest or injurious to the community, or to property or improvements in the vicinity.*

- (b) There are special circumstances applicable to the subject property which 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;
- (c) Such special circumstances were not self-imposed and create an unnecessary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the property that need not be endured to achieve the intent and purpose of the Zoning Code (§14-16-1-3) and the applicable zoning district; and
- (d) Substantial justice is done.

5. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that the Application is not going to be: (i) contrary to the public interest, (ii) injurious to the community; or (iii) injurious to the property/improvements located in the nearby vicinity of the Subject Property. Specifically, the Applicant provided testimony that that these variance application from the height of the site are not injurious because they will allow the Applicant to develop a high quality “active living community that is part of a larger EPC approved Site Plan for the Mirehaven project [as required pursuant to Section § 14-16-4-2 (C) (2) (a)]. Further, the Application and testimony of the Applicant at the Hearing suggest that there is no neighborhood opposition to the Application.
6. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that there are “special circumstances” applicable to the Subject Property which do not apply generally to other property in the same zone and vicinity. Specifically, the Applicant provided testimony that the Subject Property has a number of physical characteristics that are special circumstances such as the property slopes down from west to east (topography), and the fact that the escarpment face is 1,400 feet from the property line and is approximately 40 feet higher than the elevation of the Subject Property [as required pursuant to Section § 14-16-4-2 (C) (2) (b)]
7. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that the special circumstances presented hereinabove were not “self-imposed”, and that those special circumstances create an unnecessary hardship upon the Applicant. Specifically, the Applicant provided testimony that if forced to comply with the strict requirements of the regulations that this entire Mirehaven project would be in jeopardy of not being built as planned, which constitutes an “unjustified limitation on the reasonable use of the Subject Property” [as required pursuant to Section § 14-16-4-2 (C) (2) (c)]
8. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that substantial justice will be done if this Application is approved. [as required pursuant to Section § 14-16-4-2 (C) (2) (d)]
9. Applicant testified at the Hearing that the yellow “Notice of Hearing” signs were posted for the required time period as articulated within City of Albuquerque Code of Ordinances § 14-16-4-2 (B) (4).

CONCLUSIONS OF LAW:

The Applicant has met their burden of submitting an Application that provides evidence that satisfies the elements required within §14-16-4-2 (C) (2) of the Albuquerque Zoning Code.

DECISION:

APPROVAL of a **VARIANCE** of 4' to the required height in the site plan for subdivision of 15' to allow for a 19' height above natural grade.

If you wish to appeal this decision, you may do so by 5:00 p.m., on February 23, 2015 in the manner described below:

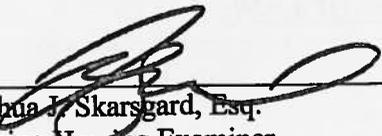
Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, Planning Application Counter located on the west side of the lobby. **Please present this letter of notification when filing an appeal.** When an application is withdrawn, the fee shall not be refunded.

An appeal shall be heard by the Board of Appeals within 45 days of the appeal period and concluded within 75 days of the appeal period. The Planning Division shall give written notice of an appeal, together with a notice of the date, time and place of the hearing to the applicant, a representative of the opponents, if any are known, and the appellant.

Please note that pursuant to Section 14. 16. 4. 4. (B), of the City of Albuquerque Comprehensive Zoning Code, you must demonstrate that you have legal standing to file an appeal as defined.

You will receive notice if any other person files an appeal. If there is no appeal, you can receive building permits any time after the appeal deadline quoted above, provided all conditions imposed at the time of approval have been met. However, the Zoning Hearing Examiner may allow issuance of building permits if the public hearing produces no objection of any kind to the approval of an application. To receive this approval, the applicant agrees in writing to return the building permit or occupation tax number.

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.



Joshua J. Skarsgard, Esq.
Zoning Hearing Examiner

cc: **Zoning Enforcement**

ZHE File

Kevin Patton Pulte Group 7601 Jefferson NE Suite 320 Albuquerque NM 87109

James Strozier, Consensus Planning 302 8TH ST NW Albuquerque NM 87102



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

PULTE GROUP (CONSENSUS PLANNING, AGENT) requests a special exception to Section 14-16-2-23(A) and Page 58 NORTHWEST MESA ESCARPMENT PLAN & the site plan for subdivision: a VARIANCE of 4' to the required height in the site plan for subdivision of 15' to allow for a 19' height above natural grade for all or a portion of Lot 170, DEL WEBB@ MIREHAVEN PHASE 1B zoned SU-2 for PDA, located on 2231 CEBOLLA WAY NW (H-8)

Special Exception No:.....14ZHE-80354
Project No:Project# 1010319
Hearing Date:January 23, 2015
Closing of Public Record:January 23, 2015
Date of Decision:.....**.*.*.*

On the 23rd day of January, 2015 (hereinafter "Hearing") CONSENSUS PLANNING, (hereinafter "Agent") acting as agent on behalf of the property owner, PULTE GROUP (hereinafter "Applicant") appeared before the Zoning Hearing Examiner (hereinafter "ZHE") requesting a Variance of 4' to the required height in the site plan for subdivision of 15' to allow for a 19' height above natural grade (hereinafter "Application") upon the real property located at 2231 CEBOLLA WAY NW ("Subject Property"). Below are the findings of facts:

FINDINGS:

1. Applicant is requesting a Variance of 4' to the required height in the site plan for subdivision of 15' to allow for a 19' height above natural grade.
2. On November 14th, 2013, the EPC approved a Site Development Plan for Subdivision for this Subject Property. As part of the EPC request the Applicant asked for exceptions to the 15 foot height limitations on 38 of the 50 lots on the property, affected by the Northwest Mesa Escarpment Plan (NWMEP). The Applicant is requesting this variance from the NWMEP height restriction defied in the Design Overlay Zone Policy 12-2 of the NWMEP.
3. The EPC does not have the authority to grant this type of variance because the NWMEP provides this as a "dimensional standard" which requires an Application and consideration by the ZHE.
4. The City of Albuquerque Zoning Code of Ordinances Section § 14-16-4-2 (C) (2) "SPECIAL EXCEPTIONS – VARIANCE" reads in part: "*A variance application shall be approved by the Zoning Hearing Examiner, if and only if, the Zoning Hearing Examiner finds all of the following:*
 - (a) *The application is not contrary to the public interest or injurious to the community, or to property or improvements in the vicinity;*
 - (b) *There are special circumstances applicable to the subject property which 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;

- (c) Such special circumstances were not self-imposed and create an unnecessary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the property that need not be endured to achieve the intent and purpose of the Zoning Code (§14-16-1-3) and the applicable zoning district; and
- (d) Substantial justice is done.

5. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that the Application is not going to be: (i) contrary to the public interest, (ii) injurious to the community; or (iii) injurious to the property/improvements located in the nearby vicinity of the Subject Property. Specifically, the Applicant provided testimony that that these variance application from the height of the site are not injurious because they will allow the Applicant to develop a high quality "active living community that is part of a larger EPC approved Site Plan for the Mirehaven project [as required pursuant to Section § 14-16-4-2 (C) (2) (a)]. Further, the Application and testimony of the Applicant at the Hearing suggest that there is no neighborhood opposition to the Application.
6. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that there are "special circumstances" applicable to the Subject Property which do not apply generally to other property in the same zone and vicinity. Specifically, the Applicant provided testimony that the Subject Property has a number of physical characteristics that are special circumstances such as the property slopes down from west to east (topography), and the fact that the escarpment face is 1,400 feet from the property line and is approximately 40 feet higher than the elevation of the Subject Property [as required pursuant to Section § 14-16-4-2 (C) (2) (b)]
7. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that the special circumstances presented hereinabove were not "self-imposed", and that those special circumstances create an unnecessary hardship upon the Applicant. Specifically, the Applicant provided testimony that if forced to comply with the strict requirements of the regulations that this entire Mirehaven project would be in jeopardy of not being built as planned, which constitutes an "unjustified limitation on the reasonable use of the Subject Property" [as required pursuant to Section § 14-16-4-2 (C) (2) (c)]
8. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that substantial justice will be done if this Application is approved. [as required pursuant to Section § 14-16-4-2 (C) (2) (d)]
9. Applicant testified at the Hearing that the yellow "Notice of Hearing" signs were posted for the required time period as articulated within City of Albuquerque Code of Ordinances § 14-16-4-2 (B) (4).

CONCLUSIONS OF LAW:

The Applicant has met their burden of submitting an Application that provides evidence that satisfies the elements required within §14-16-4-2 (C) (2) of the Albuquerque Zoning Code.

DECISION:

APPROVAL of a **VARIANCE** of of 4' to the required height in the site plan for subdivision of 15' to allow for a 19' height above natural grade.

If you wish to appeal this decision, you may do so by 5:00 p.m., on February 23, 2015 in the manner described below:

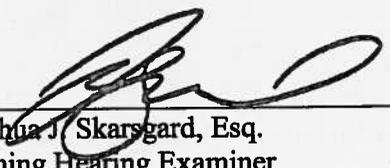
Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, Planning Application Counter located on the west side of the lobby. **Please present this letter of notification when filing an appeal.** When an application is withdrawn, the fee shall not be refunded.

An appeal shall be heard by the Board of Appeals within 45 days of the appeal period and concluded within 75 days of the appeal period. The Planning Division shall give written notice of an appeal, together with a notice of the date, time and place of the hearing to the applicant, a representative of the opponents, if any are known, and the appellant.

Please note that pursuant to Section 14. 16. 4. 4. (B), of the City of Albuquerque Comprehensive Zoning Code, you must demonstrate that you have legal standing to file an appeal as defined.

You will receive notice if any other person files an appeal. If there is no appeal, you can receive building permits any time after the appeal deadline quoted above, provided all conditions imposed at the time of approval have been met. However, the Zoning Hearing Examiner may allow issuance of building permits if the public hearing produces no objection of any kind to the approval of an application. To receive this approval, the applicant agrees in writing to return the building permit or occupation tax number.

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.



Joshua J. Skarsgard, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
Kevin Patton Pulte Group 7601 Jefferson NE Suite 320 Albuquerque NM 87109
James Strozier, Consensus Planning 302 8TH ST NW Albuquerque NM 87102



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

PULTE GROUP (CONSENSUS PLANNING, AGENT) requests a special exception to Section 14-16-2-23(A) and Page 58 NORTHWEST MESA ESCARPMENT PLAN & the site plan for subdivision: a VARIANCE of 4' to the required height in the site plan for subdivision of 15' to allow for a 19' height above natural grade for all or a portion of Lot 171, DEL WEBB@ MIREHAVEN PHASE 1B zoned SU-2 for PDA, located on 2227 CEBOLLA CREEK WAY NW (H-8)

Special Exception No:.....14ZHE-80356
Project No:Project# 1010319
Hearing Date:January 23, 2015
Closing of Public Record:January 23, 2015
Date of Decision:.....02-09-15

On the 23rd day of January, 2015 (hereinafter "Hearing") CONSENSUS PLANNING, (hereinafter "Agent") acting as agent on behalf of the property owner, PULTE GROUP (hereinafter "Applicant") appeared before the Zoning Hearing Examiner (hereinafter "ZHE") requesting a Variance of 4' to the required height in the site plan for subdivision of 15' to allow for a 19' height above natural grade (hereinafter "Application") upon the real property located at 2227 CEBOLLA CREEK WAY NW ("Subject Property"). Below are the findings of facts:

FINDINGS:

1. Applicant is requesting a Variance of 4' to the required height in the site plan for subdivision of 15' to allow for a 19' height above natural grade.
2. On November 14th, 2013, the EPC approved a Site Development Plan for Subdivision for this Subject Property. As part of the EPC request the Applicant asked for exceptions to the 15 foot height limitations on 38 of the 50 lots on the property, affected by the Northwest Mesa Escarpment Plan (NWMEP). The Applicant is requesting this variance from the NWMEP height restriction defied in the Design Overlay Zone Policy 12-2 of the NWMEP.
3. The EPC does not have the authority to grant this type of variance because the NWMEP provides this as a "dimensional standard" which requires an Application and consideration by the ZHE.
4. The City of Albuquerque Zoning Code of Ordinances Section § 14-16-4-2 (C) (2) "SPECIAL EXCEPTIONS – VARIANCE" reads in part: "*A variance application shall be approved by the Zoning Hearing Examiner, if and only if, the Zoning Hearing Examiner finds all of the following:*
 - (a) *The application is not contrary to the public interest or injurious to the community, or to property or improvements in the vicinity;*
 - (b) *There are special circumstances applicable to the subject property which 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;

(c) Such special circumstances were not self-imposed and create an unnecessary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the property that need not be endured to achieve the intent and purpose of the Zoning Code (§14-16-1-3) and the applicable zoning district; and

(d) Substantial justice is done.

5. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that the Application is not going to be: (i) contrary to the public interest, (ii) injurious to the community; or (iii) injurious to the property/improvements located in the nearby vicinity of the Subject Property. Specifically, the Applicant provided testimony that that these variance application from the height of the site are not injurious because they will allow the Applicant to develop a high quality “active living community that is part of a larger EPC approved Site Plan for the Mirehaven project [as required pursuant to Section § 14-16-4-2 (C) (2) (a)]. Further, the Application and testimony of the Applicant at the Hearing suggest that there is no neighborhood opposition to the Application.
6. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that there are “special circumstances” applicable to the Subject Property which do not apply generally to other property in the same zone and vicinity. Specifically, the Applicant provided testimony that the Subject Property has a number of physical characteristics that are special circumstances such as the property slopes down from west to east (topography), and the fact that the escarpment face is 1,400 feet from the property line and is approximately 40 feet higher than the elevation of the Subject Property [as required pursuant to Section § 14-16-4-2 (C) (2) (b)]
7. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that the special circumstances presented hereinabove were not “self-imposed”, and that those special circumstances create an unnecessary hardship upon the Applicant. Specifically, the Applicant provided testimony that if forced to comply with the strict requirements of the regulations that this entire Mirehaven project would be in jeopardy of not being built as planned, which constitutes an “unjustified limitation on the reasonable use of the Subject Property” [as required pursuant to Section § 14-16-4-2 (C) (2) (c)]
8. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that substantial justice will be done if this Application is approved. [as required pursuant to Section § 14-16-4-2 (C) (2) (d)]
9. Applicant testified at the Hearing that the yellow “Notice of Hearing” signs were posted for the required time period as articulated within City of Albuquerque Code of Ordinances § 14-16-4-2 (B) (4).

CONCLUSIONS OF LAW:

The Applicant has met their burden of submitting an Application that provides evidence that satisfies the elements required within §14-16-4-2 (C) (2) of the Albuquerque Zoning Code.

DECISION:

APPROVAL of a **VARIANCE** of of 4' to the required height in the site plan for subdivision of 15' to allow for a 19' height above natural grade.

If you wish to appeal this decision, you may do so by 5:00 p.m., on February 23, 2015 in the manner described below:

Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, Planning Application Counter located on the west side of the lobby. **Please present this letter of notification when filing an appeal.** When an application is withdrawn, the fee shall not be refunded.

An appeal shall be heard by the Board of Appeals within 45 days of the appeal period and concluded within 75 days of the appeal period. The Planning Division shall give written notice of an appeal, together with a notice of the date, time and place of the hearing to the applicant, a representative of the opponents, if any are known, and the appellant.

Please note that pursuant to Section 14. 16. 4. 4. (B), of the City of Albuquerque Comprehensive Zoning Code, you must demonstrate that you have legal standing to file an appeal as defined.

You will receive notice if any other person files an appeal. If there is no appeal, you can receive building permits any time after the appeal deadline quoted above, provided all conditions imposed at the time of approval have been met. However, the Zoning Hearing Examiner may allow issuance of building permits if the public hearing produces no objection of any kind to the approval of an application. To receive this approval, the applicant agrees in writing to return the building permit or occupation tax number.

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.



Joshua J. Skarsgard, Esq.
Zoning Hearing Examiner

cc: **Zoning Enforcement**
ZHE File Kevin Patton Pulte Group 7601 Jefferson NE Suite 320 Albuquerque
NM 87109
James Strozier, Consensus Planning 302 8TH ST NW Albuquerque NM 87102



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

PULTE GROUP (CONSENSUS PLANNING, AGENT) requests a special exception to Section 14-16-2-23(A) and Page 58 NORTHWEST MESA ESCARPMENT PLAN & the site plan for subdivision: a VARIANCE of 4' to the required height in the site plan for subdivision of 15' to allow for a 19' height above natural grade for all or a portion of Lot 172, DEL WEBB@ MIREHAVEN PHASE 1B zoned SU-2 for PDA, located on 2223 CEBOLLA CREEK WAY NW (H-8)

Special Exception No:.....14ZHE-80358
Project No:Project# 1010319
Hearing Date:January 23, 2015
Closing of Public Record:January 23, 2015
Date of Decision:.....02-09-15

On the 23rd day of January, 2015 (hereinafter "Hearing") CONSENSUS PLANNING, (hereinafter "Agent") acting as agent on behalf of the property owner, PULTE GROUP (hereinafter "Applicant") appeared before the Zoning Hearing Examiner (hereinafter "ZHE") requesting a Variance of 4' to the required height in the site plan for subdivision of 15' to allow for a 19' height above natural grade (hereinafter "Application") upon the real property located at 2223 CEBOLLA CREEK WAY NW ("Subject Property"). Below are the findings of facts:

FINDINGS:

1. Applicant is requesting a Variance of 4' to the required height in the site plan for subdivision of 15' to allow for a 19' height above natural grade.
2. On November 14th, 2013, the EPC approved a Site Development Plan for Subdivision for this Subject Property. As part of the EPC request the Applicant asked for exceptions to the 15 foot height limitations on 38 of the 50 lots on the property, affected by the Northwest Mesa Escarpment Plan (NWMEP). The Applicant is requesting this variance from the NWMEP height restriction defied in the Design Overlay Zone Policy 12-2 of the NWMEP.
3. The EPC does not have the authority to grant this type of variance because the NWMEP provides this as a "dimensional standard" which requires an Application and consideration by the ZHE.
4. The City of Albuquerque Zoning Code of Ordinances Section § 14-16-4-2 (C) (2) "SPECIAL EXCEPTIONS – VARIANCE" reads in part: "A variance application shall be approved by the Zoning Hearing Examiner, if and only if, the Zoning Hearing Examiner finds all of the following:
(a) The application is not contrary to the public interest or injurious to the community, or to property or improvements in the vicinity;

(b) There are special circumstances applicable to the subject property which 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:

(c) Such special circumstances were not self-imposed and create an unnecessary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the property that need not be endured to achieve the intent and purpose of the Zoning Code (§14-16-1-3) and the applicable zoning district; and

(d) Substantial justice is done.

5. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that the Application is not going to be: (i) contrary to the public interest, (ii) injurious to the community; or (iii) injurious to the property/improvements located in the nearby vicinity of the Subject Property. Specifically, the Applicant provided testimony that that these variance application from the height of the site are not injurious because they will allow the Applicant to develop a high quality “active living community that is part of a larger EPC approved Site Plan for the Mirehaven project [as required pursuant to Section § 14-16-4-2 (C) (2) (a)]. Further, the Application and testimony of the Applicant at the Hearing suggest that there is no neighborhood opposition to the Application.
6. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that there are “special circumstances” applicable to the Subject Property which do not apply generally to other property in the same zone and vicinity. Specifically, the Applicant provided testimony that the Subject Property has a number of physical characteristics that are special circumstances such as the property slopes down from west to east (topography), and the fact that the escarpment face is 1,400 feet from the property line and is approximately 40 feet higher than the elevation of the Subject Property [as required pursuant to Section § 14-16-4-2 (C) (2) (b)]
7. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that the special circumstances presented hereinabove were not “self-imposed”, and that those special circumstances create an unnecessary hardship upon the Applicant. Specifically, the Applicant provided testimony that if forced to comply with the strict requirements of the regulations that this entire Mirehaven project would be in jeopardy of not being built as planned, which constitutes an “unjustified limitation on the reasonable use of the Subject Property” [as required pursuant to Section § 14-16-4-2 (C) (2) (c)]
8. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that substantial justice will be done if this Application is approved. [as required pursuant to Section § 14-16-4-2 (C) (2) (d)]
9. Applicant testified at the Hearing that the yellow “Notice of Hearing” signs were posted for the required time period as articulated within City of Albuquerque Code of Ordinances § 14-16-4-2 (B) (4).

CONCLUSIONS OF LAW:

The Applicant has met their burden of submitting an Application that provides evidence that satisfies the elements required within §14-16-4-2 (C) (2) of the Albuquerque Zoning Code.

DECISION:

APPROVAL of a **VARIANCE** of 4' to the required height in the site plan for subdivision of 15' to allow for a 19' height above natural grade.

If you wish to appeal this decision, you may do so by 5:00 p.m., on February 23, 2015 in the manner described below:

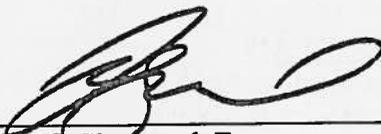
Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, Planning Application Counter located on the west side of the lobby. **Please present this letter of notification when filing an appeal.** When an application is withdrawn, the fee shall not be refunded.

An appeal shall be heard by the Board of Appeals within 45 days of the appeal period and concluded within 75 days of the appeal period. The Planning Division shall give written notice of an appeal, together with a notice of the date, time and place of the hearing to the applicant, a representative of the opponents, if any are known, and the appellant.

Please note that pursuant to Section 14. 16. 4. 4. (B), of the City of Albuquerque Comprehensive Zoning Code, you must demonstrate that you have legal standing to file an appeal as defined.

You will receive notice if any other person files an appeal. If there is no appeal, you can receive building permits any time after the appeal deadline quoted above, provided all conditions imposed at the time of approval have been met. However, the Zoning Hearing Examiner may allow issuance of building permits if the public hearing produces no objection of any kind to the approval of an application. To receive this approval, the applicant agrees in writing to return the building permit or occupation tax number.

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.



Joshua J. Skarsgard, Esq.
Zoning Hearing Examiner

cc: **Zoning Enforcement**
ZHE File
Kevin Patton Pulte Group 7601 Jefferson NE Suite 320 Albuquerque NM 87109
James Strozier, Consensus Planning 302 8TH ST NW Albuquerque NM 87102



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

PULTE GROUP (CONSENSUS PLANNING, AGENT) requests a special exception to Section 14-16-2-23(A) and Page 58 NORTHWEST MESA ESCARPMENT PLAN & the site plan for subdivision: a VARIANCE of 2.7 feet to the required height in the site plan for subdivision of 16.3 feet to allow for a 19 foot height above natural grade. for all or a portion of Lot 173, DEL WEBB@ MIREHAVEN PHASE 1B zoned SU-2 for PDA, located on 2219 CEBOLLA CREEK WAY NW (H-8)

Special Exception No:14ZHE-80362
Project No:Project# 1010319
Hearing Date:January 23, 2015
Closing of Public Record:January 23, 2015
Date of Decision:.....02-09-15

On the 23rd day of January, 2015 (hereinafter “Hearing”) CONSENSUS PLANNING, (hereinafter “Agent”) acting as agent on behalf of the property owner, PULTE GROUP (hereinafter “Applicant”) appeared before the Zoning Hearing Examiner (hereinafter “ZHE”) requesting a Variance of 2.7 feet to the required height in the site plan for subdivision of 16.3 feet to allow for a 19 foot height above natural grade (hereinafter “Application”) upon the real property located at 2219 CEBOLLA CREEK WAY NW (“Subject Property”). Below are the findings of facts:

FINDINGS:

1. Applicant is requesting a Variance of 2.7 feet to the required height in the site plan for subdivision of 16.3 feet to allow for a 19 foot height above natural grade.
2. On November 14th, 2013, the EPC approved a Site Development Plan for Subdivision for this Subject Property. As part of the EPC request the Applicant asked for exceptions to the 15 foot height limitations on 38 of the 50 lots on the property, affected by the Northwest Mesa Escarpment Plan (NWMEP). The Applicant is requesting this variance from the NWMEP height restriction defied in the Design Overlay Zone Policy 12-2 of the NWMEP.
3. The EPC does not have the authority to grant this type of variance because the NWMEP provides this as a “dimensional standard” which requires an Application and consideration by the ZHE.
4. The City of Albuquerque Zoning Code of Ordinances Section § 14-16-4-2 (C) (2) “SPECIAL EXCEPTIONS – VARIANCE” reads in part: “A variance application shall be approved by the Zoning Hearing Examiner, if and only if, the Zoning Hearing Examiner finds all of the following:”

- (a) The application is not contrary to the public interest or injurious to the community, or to property or improvements in the vicinity;
- (b) There are special circumstances applicable to the subject property which 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;
- (c) Such special circumstances were not self-imposed and create an unnecessary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the property that need not be endured to achieve the intent and purpose of the Zoning Code (§14-16-1-3) and the applicable zoning district; and
- (d) Substantial justice is done.

5. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that the Application is not going to be: (i) contrary to the public interest, (ii) injurious to the community; or (iii) injurious to the property/improvements located in the nearby vicinity of the Subject Property. Specifically, the Applicant provided testimony that that these variance application from the height of the site are not injurious because they will allow the Applicant to develop a high quality “active living community that is part of a larger EPC approved Site Plan for the Mirehaven project [as required pursuant to Section § 14-16-4-2 (C) (2) (a)]. Further, the Application and testimony of the Applicant at the Hearing suggest that there is no neighborhood opposition to the Application.
6. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that there are “special circumstances” applicable to the Subject Property which do not apply generally to other property in the same zone and vicinity. Specifically, the Applicant provided testimony that the Subject Property has a number of physical characteristics that are special circumstances such as the property slopes down from west to east (topography), and the fact that the escarpment face is 1,400 feet from the property line and is approximately 40 feet higher than the elevation of the Subject Property [as required pursuant to Section § 14-16-4-2 (C) (2) (b)]
7. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that the special circumstances presented hereinabove were not “self-imposed”, and that those special circumstances create an unnecessary hardship upon the Applicant. Specifically, the Applicant provided testimony that if forced to comply with the strict requirements of the regulations that this entire Mirehaven project would be in jeopardy of not being built as planned, which constitutes an “unjustified limitation on the reasonable use of the Subject Property” [as required pursuant to Section § 14-16-4-2 (C) (2) (c)]
8. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that substantial justice will be done if this Application is approved. [as required pursuant to Section § 14-16-4-2 (C) (2) (d)]

9. Applicant testified at the Hearing that the yellow "Notice of Hearing" signs were posted for the required time period as articulated within City of Albuquerque Code of Ordinances § 14-16-4-2 (B) (4).

CONCLUSIONS OF LAW:

The Applicant has met their burden of submitting an Application that provides evidence that satisfies the elements required within §14-16-4-2 (C) (2) of the Albuquerque Zoning Code.

DECISION:

APPROVAL of a **VARIANCE** of 2.7 feet to the required height in the site plan for subdivision of 16.3 feet to allow for a 19 foot height above natural grade.

If you wish to appeal this decision, you may do so by 5:00 p.m., on February 23, 2015 in the manner described below:

Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, Planning Application Counter located on the west side of the lobby. **Please present this letter of notification when filing an appeal.** When an application is withdrawn, the fee shall not be refunded.

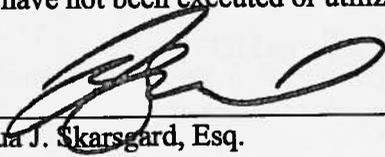
An appeal shall be heard by the Board of Appeals within 45 days of the appeal period and concluded within 75 days of the appeal period. The Planning Division shall give written notice of an appeal, together with a notice of the date, time and place of the hearing to the applicant, a representative of the opponents, if any are known, and the appellant.

Please note that pursuant to Section 14. 16. 4. 4. (B), of the City of Albuquerque Comprehensive Zoning Code, you must demonstrate that you have legal standing to file an appeal as defined.

You will receive notice if any other person files an appeal. If there is no appeal, you can receive building permits any time after the appeal deadline quoted above, provided all conditions imposed at the time of approval have been met. However, the Zoning Hearing Examiner may allow issuance of building permits if the public hearing produces no objection of any kind to the approval of an application. To receive this approval, the applicant agrees in writing to return the building permit or occupation tax number.

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.



Joshua J. Skarsgard, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
Kevin Patton Pulte Group 7601 Jefferson NE Suite 320 Albuquerque NM 87109
James Strozier, Consensus Planning 302 8TH ST NW Albuquerque NM 87102



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

PULTE GROUP (CONSENSUS PLANNING, AGENT) requests a special exception to Section 14-16-2-23(A) and Page 58 NORTHWEST MESA ESCARPMENT PLAN & the site plan for subdivision: a VARIANCE of 1.7' to the required height in the site plan for subdivision of 17.3' to allow for a 19' height above natural grade for all or a portion of Lot 174, DEL WEBB@ MIREHAVEN PHASE 1B zoned SU-2 for PDA, located on 2215 CEBOLLA CREEK WAY NW (H-8)

Special Exception No:.....14ZHE-80369
Project No:Project# 1010319
Hearing Date:January 23, 2015
Closing of Public Record:January 23, 2015
Date of Decision:.....02-09-15

On the 23rd day of January, 2015 (hereinafter "Hearing") CONSENSUS PLANNING, (hereinafter "Agent") acting as agent on behalf of the property owner, PULTE GROUP (hereinafter "Applicant") appeared before the Zoning Hearing Examiner (hereinafter "ZHE") requesting a Variance of 1.7' to the required height in the site plan for subdivision of 17.3' to allow for a 19' height above natural grade (hereinafter "Application") upon the real property located at 2215 CEBOLLA CREEK WAY NW ("Subject Property"). Below are the findings of facts:

FINDINGS:

1. Applicant is requesting a Variance of 1.7' to the required height in the site plan for subdivision of 17.3' to allow for a 19' height above natural grade.
2. On November 14th, 2013, the EPC approved a Site Development Plan for Subdivision for this Subject Property. As part of the EPC request the Applicant asked for exceptions to the 15 foot height limitations on 38 of the 50 lots on the property, affected by the Northwest Mesa Escarpment Plan (NWMEP). The Applicant is requesting this variance from the NWMEP height restriction defied in the Design Overlay Zone Policy 12-2 of the NWMEP.
3. The EPC does not have the authority to grant this type of variance because the NWMEP provides this as a "dimensional standard" which requires an Application and consideration by the ZHE.
4. The City of Albuquerque Zoning Code of Ordinances Section § 14-16-4-2 (C) (2) "SPECIAL EXCEPTIONS – VARIANCE" reads in part: "*A variance application shall be approved by the Zoning Hearing Examiner, if and only if, the Zoning Hearing Examiner finds all of the following:*
 - (a) *The application is not contrary to the public interest or injurious to the community, or to property or improvements in the vicinity;*
 - (b) *There are special circumstances applicable to the subject property which 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:

(c) Such special circumstances were not self-imposed and create an unnecessary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the property that need not be endured to achieve the intent and purpose of the Zoning Code (§14-16-1-3) and the applicable zoning district; and

(d) Substantial justice is done.

5. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that the Application is not going to be: (i) contrary to the public interest, (ii) injurious to the community; or (iii) injurious to the property/improvements located in the nearby vicinity of the Subject Property. Specifically, the Applicant provided testimony that that these variance application from the height of the site are not injurious because they will allow the Applicant to develop a high quality “active living community that is part of a larger EPC approved Site Plan for the Mirehaven project [as required pursuant to Section § 14-16-4-2 (C) (2) (a)]. Further, the Application and testimony of the Applicant at the Hearing suggest that there is no neighborhood opposition to the Application.
6. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that there are “special circumstances” applicable to the Subject Property which do not apply generally to other property in the same zone and vicinity. Specifically, the Applicant provided testimony that the Subject Property has a number of physical characteristics that are special circumstances such as the property slopes down from west to east (topography), and the fact that the escarpment face is 1,400 feet from the property line and is approximately 40 feet higher than the elevation of the Subject Property [as required pursuant to Section § 14-16-4-2 (C) (2) (b)]
7. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that the special circumstances presented hereinabove were not “self-imposed”, and that those special circumstances create an unnecessary hardship upon the Applicant. Specifically, the Applicant provided testimony that if forced to comply with the strict requirements of the regulations that this entire Mirehaven project would be in jeopardy of not being built as planned, which constitutes an “unjustified limitation on the reasonable use of the Subject Property” [as required pursuant to Section § 14-16-4-2 (C) (2) (c)]
8. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that substantial justice will be done if this Application is approved. [as required pursuant to Section § 14-16-4-2 (C) (2) (d)]
9. Applicant testified at the Hearing that the yellow “Notice of Hearing” signs were posted for the required time period as articulated within City of Albuquerque Code of Ordinances § 14-16-4-2 (B) (4).

CONCLUSIONS OF LAW:

The Applicant has met their burden of submitting an Application that provides evidence that satisfies the elements required within §14-16-4-2 (C) (2) of the Albuquerque Zoning Code.

DECISION:

APPROVAL of a **VARIANCE** of 1.7' to the required height in the site plan for subdivision of 17.3' to allow for a 19' height above natural grade.

If you wish to appeal this decision, you may do so by 5:00 p.m., on February 23, 2015 in the manner described below:

Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, Planning Application Counter located on the west side of the lobby. **Please present this letter of notification when filing an appeal.** When an application is withdrawn, the fee shall not be refunded.

An appeal shall be heard by the Board of Appeals within 45 days of the appeal period and concluded within 75 days of the appeal period. The Planning Division shall give written notice of an appeal, together with a notice of the date, time and place of the hearing to the applicant, a representative of the opponents, if any are known, and the appellant.

Please note that pursuant to Section 14. 16. 4. 4. (B), of the City of Albuquerque Comprehensive Zoning Code, you must demonstrate that you have legal standing to file an appeal as defined.

You will receive notice if any other person files an appeal. If there is no appeal, you can receive building permits any time after the appeal deadline quoted above, provided all conditions imposed at the time of approval have been met. However, the Zoning Hearing Examiner may allow issuance of building permits if the public hearing produces no objection of any kind to the approval of an application. To receive this approval, the applicant agrees in writing to return the building permit or occupation tax number.

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.



Joshua J. Skarsgard, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
Kevin Patton Pulte Group 7601 Jefferson NE Suite 320 Albuquerque NM 87109
James Strozier, Consensus Planning 302 8TH ST NW Albuquerque NM 87102



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

PULTE GROUP (CONSENSUS PLANNING, AGENT) requests a special exception to Section 14-16-2-23(A) and Page 58 NORTHWEST MESA ESCARPMENT PLAN & the site plan for subdivision: a VARIANCE of 8' to the required height in the site plan for subdivision of 18.2' to allow for a 19' height above natural grade for all or a portion of Lot 175, DEL WEBB@ MIREHAVEN PHASE 1B zoned SU-2 for PDA, located on 2209 CEBOLLA CREEK WAY NW (H-8)

Special Exception No:14ZHE-80373
Project No:Project# 1010319
Hearing Date:January 23, 2015
Closing of Public Record:January 23, 2015
Date of Decision:.....02-09-15

On the 23rd day of January, 2015 (hereinafter "Hearing") CONSENSUS PLANNING, (hereinafter "Agent") acting as agent on behalf of the property owner, PULTE GROUP (hereinafter "Applicant") appeared before the Zoning Hearing Examiner (hereinafter "ZHE") requesting a Variance of .8' to the required height in the site plan for subdivision of 18.2' to allow for a 19' height above natural grade (hereinafter "Application") upon the real property located at 2209 CEBOLLA CREEK WAY NW ("Subject Property"). Below are the findings of facts:

FINDINGS:

1. Applicant is requesting a Variance of .8' to the required height in the site plan for subdivision of 18.2' to allow for a 19' height above natural grade.
2. On November 14th, 2013, the EPC approved a Site Development Plan for Subdivision for this Subject Property. As part of the EPC request the Applicant asked for exceptions to the 15 foot height limitations on 38 of the 50 lots on the property, affected by the Northwest Mesa Escarpment Plan (NWMEP). The Applicant is requesting this variance from the NWMEP height restriction defied in the Design Overlay Zone Policy 12-2 of the NWMEP.
3. The EPC does not have the authority to grant this type of variance because the NWMEP provides this as a "dimensional standard" which requires an Application and consideration by the ZHE.
4. The City of Albuquerque Zoning Code of Ordinances Section § 14-16-4-2 (C) (2) "SPECIAL EXCEPTIONS – VARIANCE" reads in part: "*A variance application shall be approved by the Zoning Hearing Examiner, if and only if, the Zoning Hearing Examiner finds all of the following:*
(a) The application is not contrary to the public interest or injurious to the community, or to property or improvements in the vicinity;

(b) There are special circumstances applicable to the subject property which 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;

(c) Such special circumstances were not self-imposed and create an unnecessary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the property that need not be endured to achieve the intent and purpose of the Zoning Code (§14-16-1-3) and the applicable zoning district; and

(d) Substantial justice is done.

5. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that the Application is not going to be: **(i)** contrary to the public interest, **(ii)** injurious to the community; or **(iii)** injurious to the property/improvements located in the nearby vicinity of the Subject Property. Specifically, the Applicant provided testimony that that these variance application from the height of the site are not injurious because they will allow the Applicant to develop a high quality “active living community that is part of a larger EPC approved Site Plan for the Mirehaven project [as required pursuant to Section § 14-16-4-2 (C) (2) (a)]. Further, the Application and testimony of the Applicant at the Hearing suggest that there is no neighborhood opposition to the Application.
6. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that there are “special circumstances” applicable to the Subject Property which do not apply generally to other property in the same zone and vicinity. Specifically, the Applicant provided testimony that the Subject Property has a number of physical characteristics that are special circumstances such as the property slopes down from west to east (topography), and the fact that the escarpment face is 1,400 feet from the property line and is approximately 40 feet higher than the elevation of the Subject Property [as required pursuant to Section § 14-16-4-2 (C) (2) (b)]
7. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that the special circumstances presented hereinabove were not “self-imposed”, and that those special circumstances create an unnecessary hardship upon the Applicant. Specifically, the Applicant provided testimony that if forced to comply with the strict requirements of the regulations that this entire Mirehaven project would be in jeopardy of not being built as planned, which constitutes an “unjustified limitation on the reasonable use of the Subject Property” [as required pursuant to Section § 14-16-4-2 (C) (2) (c)]
8. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that substantial justice will be done if this Application is approved. [as required pursuant to Section § 14-16-4-2 (C) (2) (d)]
9. Applicant testified at the Hearing that the yellow “Notice of Hearing” signs were posted for the required time period as articulated within City of Albuquerque Code of Ordinances § 14-16-4-2 (B) (4).

CONCLUSIONS OF LAW:

The Applicant has met their burden of submitting an Application that provides evidence that satisfies the elements required within §14-16-4-2 (C) (2) of the Albuquerque Zoning Code.

DECISION:

APPROVAL of a **VARIANCE** of .8' to the required height in the site plan for subdivision of 18.2' to allow for a 19' height above natural grade.

If you wish to appeal this decision, you may do so by 5:00 p.m., on February 23, 2015 in the manner described below:

Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, Planning Application Counter located on the west side of the lobby. **Please present this letter of notification when filing an appeal.** When an application is withdrawn, the fee shall not be refunded.

An appeal shall be heard by the Board of Appeals within 45 days of the appeal period and concluded within 75 days of the appeal period. The Planning Division shall give written notice of an appeal, together with a notice of the date, time and place of the hearing to the applicant, a representative of the opponents, if any are known, and the appellant.

Please note that pursuant to Section 14. 16. 4. 4. (B), of the City of Albuquerque Comprehensive Zoning Code, you must demonstrate that you have legal standing to file an appeal as defined.

You will receive notice if any other person files an appeal. If there is no appeal, you can receive building permits any time after the appeal deadline quoted above, provided all conditions imposed at the time of approval have been met. However, the Zoning Hearing Examiner may allow issuance of building permits if the public hearing produces no objection of any kind to the approval of an application. To receive this approval, the applicant agrees in writing to return the building permit or occupation tax number.

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.



Joshua J. Skarsgard, Esq.
Zoning Hearing Examiner

cc: **Zoning Enforcement**

ZHE File

Kevin Patton Pulte Group 7601 Jefferson NE Suite 320 Albuquerque NM 87109

James Strozier, Consensus Planning 302 8TH ST NW Albuquerque NM 87102



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

PULTE GROUP (CONSENSUS PLANNING, AGENT) requests a special exception to Section 14-16-2-23(A) and Page 58 NORTHWEST MESA ESCARPMENT PLAN & the site plan for subdivision: a VARIANCE of .2' to the required height in the site plan for subdivision of 18.8' to allow for a 19' height above natural grade for all or a portion of Lot 176, DEL WEBB@ MIREHAVEN PHASE 1B zoned SU-2 for PDA, located on 2205 CEBOLLA CREEK WAY NW (H-8)

Special Exception No:.....14ZHE-80383
Project No:Project# 1010319
Hearing Date:January 23, 2015
Closing of Public Record:January 23, 2015
Date of Decision:.....02-09-15

On the 23rd day of January, 2015 (hereinafter "Hearing") CONSENSUS PLANNING, (hereinafter "Agent") acting as agent on behalf of the property owner, PULTE GROUP (hereinafter "Applicant") appeared before the Zoning Hearing Examiner (hereinafter "ZHE") requesting a Variance of .2' to the required height in the site plan for subdivision of 18.8' to allow for a 19' height above natural grade (hereinafter "Application") upon the real property located at 2205 CEBOLLA CREEK WAY NW ("Subject Property"). Below are the findings of facts:

FINDINGS:

1. Applicant is requesting a Variance of .2' to the required height in the site plan for subdivision of 18.8' to allow for a 19' height above natural grade.
2. On November 14th, 2013, the EPC approved a Site Development Plan for Subdivision for this Subject Property. As part of the EPC request the Applicant asked for exceptions to the 15 foot height limitations on 38 of the 50 lots on the property, affected by the Northwest Mesa Escarpment Plan (NWMEP). The Applicant is requesting this variance from the NWMEP height restriction defied in the Design Overlay Zone Policy 12-2 of the NWMEP.
3. The EPC does not have the authority to grant this type of variance because the NWMEP provides this as a "dimensional standard" which requires an Application and consideration by the ZHE.
4. The City of Albuquerque Zoning Code of Ordinances Section § 14-16-4-2 (C) (2) "SPECIAL EXCEPTIONS – VARIANCE" reads in part: "*A variance application shall be approved by the Zoning Hearing Examiner, if and only if, the Zoning Hearing Examiner finds all of the following:*
 - (a) *The application is not contrary to the public interest or injurious to the community, or to property or improvements in the vicinity;*
 - (b) *There are special circumstances applicable to the subject property which 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:

- (c) Such special circumstances were not self-imposed and create an unnecessary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the property that need not be endured to achieve the intent and purpose of the Zoning Code (§14-16-1-3) and the applicable zoning district; and
- (d) Substantial justice is done.

5. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that the Application is not going to be: (i) contrary to the public interest, (ii) injurious to the community; or (iii) injurious to the property/improvements located in the nearby vicinity of the Subject Property. Specifically, the Applicant provided testimony that that these variance application from the height of the site are not injurious because they will allow the Applicant to develop a high quality “active living community that is part of a larger EPC approved Site Plan for the Mirehaven project [as required pursuant to Section § 14-16-4-2 (C) (2) (a)]. Further, the Application and testimony of the Applicant at the Hearing suggest that there is no neighborhood opposition to the Application.
6. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that there are “special circumstances” applicable to the Subject Property which do not apply generally to other property in the same zone and vicinity. Specifically, the Applicant provided testimony that the Subject Property has a number of physical characteristics that are special circumstances such as the property slopes down from west to east (topography), and the fact that the escarpment face is 1,400 feet from the property line and is approximately 40 feet higher than the elevation of the Subject Property [as required pursuant to Section § 14-16-4-2 (C) (2) (b)]
7. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that the special circumstances presented hereinabove were not “self-imposed”, and that those special circumstances create an unnecessary hardship upon the Applicant. Specifically, the Applicant provided testimony that if forced to comply with the strict requirements of the regulations that this entire Mirehaven project would be in jeopardy of not being built as planned, which constitutes an “unjustified limitation on the reasonable use of the Subject Property” [as required pursuant to Section § 14-16-4-2 (C) (2) (c)]
8. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that substantial justice will be done if this Application is approved. [as required pursuant to Section § 14-16-4-2 (C) (2) (d)]
9. Applicant testified at the Hearing that the yellow “Notice of Hearing” signs were posted for the required time period as articulated within City of Albuquerque Code of Ordinances § 14-16-4-2 (B) (4).

CONCLUSIONS OF LAW:

The Applicant has met their burden of submitting an Application that provides evidence that satisfies the elements required within §14-16-4-2 (C) (2) of the Albuquerque Zoning Code.

DECISION:

APPROVAL of a **VARIANCE** of .2' to the required height in the site plan for subdivision of 18.8' to allow for a 19' height above natural grade.

If you wish to appeal this decision, you may do so by 5:00 p.m., on February 23, 2015 in the manner described below:

Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, Planning Application Counter located on the west side of the lobby. **Please present this letter of notification when filing an appeal.** When an application is withdrawn, the fee shall not be refunded.

An appeal shall be heard by the Board of Appeals within 45 days of the appeal period and concluded within 75 days of the appeal period. The Planning Division shall give written notice of an appeal, together with a notice of the date, time and place of the hearing to the applicant, a representative of the opponents, if any are known, and the appellant.

Please note that pursuant to Section 14. 16. 4. 4. (B), of the City of Albuquerque Comprehensive Zoning Code, you must demonstrate that you have legal standing to file an appeal as defined.

You will receive notice if any other person files an appeal. If there is no appeal, you can receive building permits any time after the appeal deadline quoted above, provided all conditions imposed at the time of approval have been met. However, the Zoning Hearing Examiner may allow issuance of building permits if the public hearing produces no objection of any kind to the approval of an application. To receive this approval, the applicant agrees in writing to return the building permit or occupation tax number.

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.



Joshua L. Skarsgard, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
Kevin Patton Pulte Group 7601 Jefferson NE Suite 320 Albuquerque NM 87109
James Strozier, Consensus Planning 302 8TH ST NW Albuquerque NM 87102