



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

KEVIN PATTON / PULTE GROUP  
(CONSENSUS PLANNING, AGENT) requests  
a special exception to Page 88 VOLCANO  
CLIFFS SDP: a VARIANCE request of 8' to the  
required 10' minimum garage setback from the  
main facade for a proposed new dwelling for  
all or a portion of Lot 1, MONTECITO WEST  
UNIT 1 zoned SU-2 VCRR, located on 8716  
VISTA CUMBRE RD NW (D-9)

Special Exception No:.....14ZHE-80355  
Project No: .....Project# 1010320  
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") On the 23rd day of January, 2015 (hereinafter "Hearing") CONSENSUS PLANNING, (hereinafter "Agent") acting as agent on behalf of the property owner, Kevin Patton/PULTE GROUP (hereinafter "Applicant") appeared before the Zoning Hearing Examiner (hereinafter "ZHE") requesting a Variance of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling (hereinafter "Application") upon the real property located at 8716 VISTA CUMBRE RD NW ("Subject Property"). Below are the findings of facts:

**FINDINGS:**

1. Applicant is requesting a Variance of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling.
2. On November 14<sup>th</sup>, 2013, the EPC approved a Site Development Plan for Subdivision for this Subject Property. The Applicant is requesting this variance from the Volcano Cliffs Sector Development Plan General Standards for residential garage requirements. This Subject Property is intended to be developed as a single family subdivision under the Private Commons Development regulations that are contained in Section 14-16-3-16 of the City of Albuquerque Zoning Code.
3. The EPC does not have the authority to grant this type of variance, and Planning Staff determined that these Applications for garage setback standards need to be reviewed 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 garage setback to the façade of the homes, 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”. These garage setback variances are critical to the planning and design of this subdivision and will not be injurious to any of the neighboring property owners [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 property is directly adjacent to the south to an area that was identified by the NWMEP as an area for conservation as it is a buffer for the Petroglyph National Monument [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 10' minimum garage setback from the main facade for a proposed new dwelling.

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.



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Joshua T. 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**



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(CONSENSUS PLANNING, AGENT) requests  
a special exception to Page 88 VOLCANO  
CLIFFS SDP: a VARIANCE request of 8' to the  
required 10' minimum garage setback from the  
main facade for a proposed new dwelling for  
all or a portion of Lot 3, MONTECITO WEST  
UNIT 1 zoned SU-2 VCRR, located on 8708  
VISTA CUMBRE RD NW (D-9)

Special Exception No:.....14ZHE-80357  
Project No: .....Project# 1010320  
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") On the 23rd day of January, 2015 (hereinafter "Hearing") CONSENSUS PLANNING, (hereinafter "Agent") acting as agent on behalf of the property owner, Kevin Patton/PULTE GROUP (hereinafter "Applicant") appeared before the Zoning Hearing Examiner (hereinafter "ZHE") requesting a Variance of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling (hereinafter "Application") upon the real property located at 8708 VISTA CUMBRE RD NW ("Subject Property"). Below are the findings of facts:

**FINDINGS:**

1. Applicant is requesting a Variance of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling.
2. On November 14<sup>th</sup>, 2013, the EPC approved a Site Development Plan for Subdivision for this Subject Property. The Applicant is requesting this variance from the Volcano Cliffs Sector Development Plan General Standards for residential garage requirements. This Subject Property is intended to be developed as a single family subdivision under the Private Commons Development regulations that are contained in Section 14-16-3-16 of the City of Albuquerque Zoning Code.
3. The EPC does not have the authority to grant this type of variance, and Planning Staff determined that these Applications for garage setback standards need to be reviewed 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 garage setback to the façade of the homes, 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”. These garage setback variances are critical to the planning and design of this subdivision and will not be injurious to any of the neighboring property owners [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 property is directly adjacent to the south to an area that was identified by the NWMEP as an area for conservation as it is a buffer for the Petroglyph National Monument [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 10' minimum garage setback from the main facade for a proposed new dwelling.

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.

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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.

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---

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



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ZONING HEARING EXAMINER  
NOTIFICATION OF DECISION

KEVIN PATTON / PULTE GROUP (CONSENSUS PLANNING, AGENT) requests a special exception to Page 88 VOLCANO CLIFFS SDP: a VARIANCE request of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling for all or a portion of Lot 4, MONTECITO WEST UNIT 1 zoned SU-2 VCRR, located on 8704 VISTA CUMBRE RD NW (D-9)

Special Exception No:.....14ZHE-80359  
Project No: .....Project# 1010320  
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") On the 23rd day of January, 2015 (hereinafter "Hearing") CONSENSUS PLANNING, (hereinafter "Agent") acting as agent on behalf of the property owner, Kevin Patton/PULTE GROUP (hereinafter "Applicant") appeared before the Zoning Hearing Examiner (hereinafter "ZHE") requesting a Variance of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling (hereinafter "Application") upon the real property located at 8704 VISTA CUMBRE RD NW ("Subject Property"). Below are the findings of facts:

**FINDINGS:**

1. Applicant is requesting a Variance of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling .
2. On November 14<sup>th</sup>, 2013, the EPC approved a Site Development Plan for Subdivision for this Subject Property. The Applicant is requesting this variance from the Volcano Cliffs Sector Development Plan General Standards for residential garage requirements. This Subject Property is intended to be developed as a single family subdivision under the Private Commons Development regulations that are contained in Section 14-16-3-16 of the City of Albuquerque Zoning Code.
3. The EPC does not have the authority to grant this type of variance, and Planning Staff determined that these Applications for garage setback standards need to be reviewed 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 garage setback to the façade of the homes, 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”. These garage setback variances are critical to the planning and design of this subdivision and will not be injurious to any of the neighboring property owners [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 property is directly adjacent to the south to an area that was identified by the NWMEP as an area for conservation as it is a buffer for the Petroglyph National Monument [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 10' minimum garage setback from the main facade for a proposed new dwelling.

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.

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Special Exception No:.....14ZHE-80360  
Project No: .....Project# 1010320  
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") On the 23rd day of January, 2015 (hereinafter "Hearing") CONSENSUS PLANNING, (hereinafter "Agent") acting as agent on behalf of the property owner, Kevin Patton/PULTE GROUP (hereinafter "Applicant") appeared before the Zoning Hearing Examiner (hereinafter "ZHE") requesting a Variance of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling (hereinafter "Application") upon the real property located at 8700 VISTA CUMBRE RD NW ("Subject Property"). Below are the findings of facts:

**FINDINGS:**

1. Applicant is requesting a Variance of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling .
2. On November 14<sup>th</sup>, 2013, the EPC approved a Site Development Plan for Subdivision for this Subject Property. The Applicant is requesting this variance from the Volcano Cliffs Sector Development Plan General Standards for residential garage requirements. This Subject Property is intended to be developed as a single family subdivision under the Private Commons Development regulations that are contained in Section 14-16-3-16 of the City of Albuquerque Zoning Code.
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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 10' minimum garage setback from the main facade for a proposed new dwelling.

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:

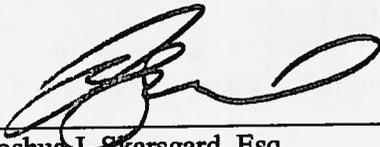
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Please note that pursuant to Section 14. 16. 4. 4. (B), of the City of Albuquerque Comprehensive Zoning Code, you must demonstrate that you have legal standing to file an appeal as defined.

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.



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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**



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

KEVIN PATTON / PULTE GROUP (CONSENSUS PLANNING, AGENT) requests a special exception to Page 88 VOLCANO CLIFFS SDP: a VARIANCE request of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling for all or a portion of Lot 6, MONTECITO WEST UNIT 1 zoned SU-2 VCRR, located on 6700 BORDE ABIERTO ST NW (D-9)

Special Exception No: .....14ZHE-80361  
Project No: .....Project# 1010320  
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") On the 23rd day of January, 2015 (hereinafter "Hearing") CONSENSUS PLANNING, (hereinafter "Agent") acting as agent on behalf of the property owner, Kevin Patton/PULTE GROUP (hereinafter "Applicant") appeared before the Zoning Hearing Examiner (hereinafter "ZHE") requesting a Variance of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling (hereinafter "Application") upon the real property located at 6700 BORDE ABIERTO ST NW ("Subject Property"). Below are the findings of facts:

**FINDINGS:**

1. Applicant is requesting a Variance of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling.
2. On November 14<sup>th</sup>, 2013, the EPC approved a Site Development Plan for Subdivision for this Subject Property. The Applicant is requesting this variance from the Volcano Cliffs Sector Development Plan General Standards for residential garage requirements. This Subject Property is intended to be developed as a single family subdivision under the Private Commons Development regulations that are contained in Section 14-16-3-16 of the City of Albuquerque Zoning Code.
3. The EPC does not have the authority to grant this type of variance, and Planning Staff determined that these Applications for garage setback standards need to be reviewed 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 garage setback to the façade of the homes, 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”. These garage setback variances are critical to the planning and design of this subdivision and will not be injurious to any of the neighboring property owners [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 property is directly adjacent to the south to an area that was identified by the NWMEP as an area for conservation as it is a buffer for the Petroglyph National Monument [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 10' minimum garage setback from the main facade for a proposed new dwelling.

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.

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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.

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application is approved, bring this decision with you when you apply for any related building permit or occupation tax number. Approval of a conditional use or a variance application is void after one year from date of approval if the rights and privileges are granted, thereby have not been executed or utilized.



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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

KEVIN PATTON / PULTE GROUP (CONSENSUS PLANNING, AGENT) requests a special exception to Page 88 VOLCANO CLIFFS SDP: a VARIANCE request of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling for all or a portion of Lot 7, MONTECITO WEST UNIT 1 zoned SU-2 VCRR, located on 6704 BORDE ABIERTO ST NW (D-9)

Special Exception No:.....14ZHE-80363  
Project No: .....Project# 1010320  
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") On the 23rd day of January, 2015 (hereinafter "Hearing") CONSENSUS PLANNING, (hereinafter "Agent") acting as agent on behalf of the property owner, Kevin Patton/PULTE GROUP (hereinafter "Applicant") appeared before the Zoning Hearing Examiner (hereinafter "ZHE") requesting a Variance of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling (hereinafter "Application") upon the real property located at 6704 BORDE ABIERTO ST NW ("Subject Property"). Below are the findings of facts:

**FINDINGS:**

1. Applicant is requesting a Variance of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling.
2. On November 14<sup>th</sup>, 2013, the EPC approved a Site Development Plan for Subdivision for this Subject Property. The Applicant is requesting this variance from the Volcano Cliffs Sector Development Plan General Standards for residential garage requirements. This Subject Property is intended to be developed as a single family subdivision under the Private Commons Development regulations that are contained in Section 14-16-3-16 of the City of Albuquerque Zoning Code.
3. The EPC does not have the authority to grant this type of variance, and Planning Staff determined that these Applications for garage setback standards need to be reviewed 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 garage setback to the façade of the homes, 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”. These garage setback variances are critical to the planning and design of this subdivision and will not be injurious to any of the neighboring property owners [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 property is directly adjacent to the south to an area that was identified by the NWMEP as an area for conservation as it is a buffer for the Petroglyph National Monument [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 10' minimum garage setback from the main facade for a proposed new dwelling.

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.

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decision does not constitute approval of plans for a building permit. If your application is approved, bring this decision with you when you apply for any related building permit or occupation tax number. Approval of a conditional use or a variance application is void after one year from date of approval if the rights and privileges are granted, thereby have not been executed or utilized.



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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

KEVIN PATTON / PULTE GROUP (CONSENSUS PLANNING, AGENT) requests a special exception to Page 88 VOLCANO CLIFFS SDP: a VARIANCE request of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling for all or a portion of Lot 8, MONTECITO WEST UNIT 1 zoned SU-2 VCRR, located on 6708 BORDE ABIERTO ST NW (D-9)

Special Exception No:.....14ZHE-80364  
Project No: .....Project# 1010320  
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") On the 23rd day of January, 2015 (hereinafter "Hearing") CONSENSUS PLANNING, (hereinafter "Agent") acting as agent on behalf of the property owner, Kevin Patton/PULTE GROUP (hereinafter "Applicant") appeared before the Zoning Hearing Examiner (hereinafter "ZHE") requesting a Variance of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling (hereinafter "Application") upon the real property located at 6708 BORDE ABIERTO ST NW ("Subject Property"). Below are the findings of facts:

**FINDINGS:**

1. Applicant is requesting a Variance of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling.
2. On November 14<sup>th</sup>, 2013, the EPC approved a Site Development Plan for Subdivision for this Subject Property. The Applicant is requesting this variance from the Volcano Cliffs Sector Development Plan General Standards for residential garage requirements. This Subject Property is intended to be developed as a single family subdivision under the Private Commons Development regulations that are contained in Section 14-16-3-16 of the City of Albuquerque Zoning Code.
3. The EPC does not have the authority to grant this type of variance, and Planning Staff determined that these Applications for garage setback standards need to be reviewed 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 garage setback to the façade of the homes, 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”. These garage setback variances are critical to the planning and design of this subdivision and will not be injurious to any of the neighboring property owners [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 property is directly adjacent to the south to an area that was identified by the NWMEP as an area for conservation as it is a buffer for the Petroglyph National Monument [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 10' minimum garage setback from the main facade for a proposed new dwelling.

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.

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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.

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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

KEVIN PATTON / PULTE GROUP (CONSENSUS PLANNING, AGENT) requests a special exception to Page 88 VOLCANO CLIFFS SDP: a VARIANCE request of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling for all or a portion of Lot 9, MONTECITO WEST UNIT 1 zoned SU-2 VCRR, located on 6701 BORDE ABIERTO ST NW (D-9)

Special Exception No:.....14ZHE-80365  
Project No: .....Project# 1010320  
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") On the 23rd day of January, 2015 (hereinafter "Hearing") CONSENSUS PLANNING, (hereinafter "Agent") acting as agent on behalf of the property owner, Kevin Patton/PULTE GROUP (hereinafter "Applicant") appeared before the Zoning Hearing Examiner (hereinafter "ZHE") requesting a Variance of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling (hereinafter "Application") upon the real property located at 6701 BORDE ABIERTO ST NW ("Subject Property"). Below are the findings of facts:

**FINDINGS:**

1. Applicant is requesting a Variance of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling
2. On November 14<sup>th</sup>, 2013, the EPC approved a Site Development Plan for Subdivision for this Subject Property. The Applicant is requesting this variance from the Volcano Cliffs Sector Development Plan General Standards for residential garage requirements. This Subject Property is intended to be developed as a single family subdivision under the Private Commons Development regulations that are contained in Section 14-16-3-16 of the City of Albuquerque Zoning Code.
3. The EPC does not have the authority to grant this type of variance, and Planning Staff determined that these Applications for garage setback standards need to be reviewed 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 garage setback to the façade of the homes, 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”. These garage setback variances are critical to the planning and design of this subdivision and will not be injurious to any of the neighboring property owners [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 property is directly adjacent to the south to an area that was identified by the NWMEP as an area for conservation as it is a buffer for the Petroglyph National Monument [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 10' minimum garage setback from the main facade for a proposed new dwelling.

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:

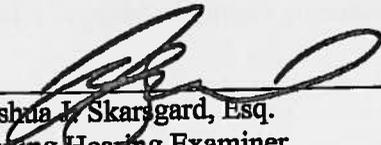
Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, 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.



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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

KEVIN PATTON / PULTE GROUP  
(CONSENSUS PLANNING, AGENT) requests  
a special exception to Page 88 VOLCANO  
CLIFFS SDP: a VARIANCE request of 8' to the  
required 10' minimum garage setback from the  
main facade for a proposed new dwelling for  
all or a portion of Lot 10, MONTECITO WEST  
UNIT 1 zoned SU-2 VCRR, located on [REDACTED]  
[REDACTED]

Special Exception No:.....14ZHE-80366  
Project No: .....Project# 1010320  
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") On the 23rd day of January, 2015 (hereinafter "Hearing") CONSENSUS PLANNING, (hereinafter "Agent") acting as agent on behalf of the property owner, Kevin Patton/PULTE GROUP (hereinafter "Applicant") appeared before the Zoning Hearing Examiner (hereinafter "ZHE") requesting a Variance of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling (hereinafter "Application") upon the real property located at 6705 BORDE ABIERTO ST NW ("Subject Property"). Below are the findings of facts:

**FINDINGS:**

1. Applicant is requesting a Variance of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling.
2. On November 14<sup>th</sup>, 2013, the EPC approved a Site Development Plan for Subdivision for this Subject Property. The Applicant is requesting this variance from the Volcano Cliffs Sector Development Plan General Standards for residential garage requirements. This Subject Property is intended to be developed as a single family subdivision under the Private Commons Development regulations that are contained in Section 14-16-3-16 of the City of Albuquerque Zoning Code.
3. The EPC does not have the authority to grant this type of variance, and Planning Staff determined that these Applications for garage setback standards need to be reviewed 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 garage setback to the façade of the homes, 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”. These garage setback variances are critical to the planning and design of this subdivision and will not be injurious to any of the neighboring property owners [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 property is directly adjacent to the south to an area that was identified by the NWMEP as an area for conservation as it is a buffer for the Petroglyph National Monument [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 10' minimum garage setback from the main facade for a proposed new dwelling.

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.

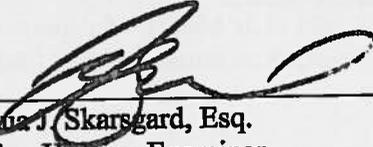
An appeal shall be heard by the Board of Appeals within 45 days of the appeal period and concluded within 75 days of the appeal period. The Planning Division shall give written notice of an appeal, together with a notice of the date, time and place of the hearing to the applicant, a representative of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

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Successful applicants are reminded that other regulations of the City must be complied with, even after approval of a special exception is secured. This decision does not constitute approval of plans for a building permit. If your

application is approved, bring this decision with you when you apply for any related building permit or occupation tax number. Approval of a conditional use or a variance application is void after one year from date of approval if the rights and privileges are granted, thereby have not been executed or utilized.



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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

KEVIN PATTON / PULTE GROUP (CONSENSUS PLANNING, AGENT) requests a special exception to Page 88 VOLCANO CLIFFS SDP: a VARIANCE request of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling for all or a portion of Lot 11, MONTECITO WEST UNIT 1 zoned SU-2 VCRR, located on 6709 BORDE ABIERTO ST NW (D-9)

Special Exception No:.....14ZHE-80367  
Project No: .....Project# 1010320  
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") On the 23rd day of January, 2015 (hereinafter "Hearing") CONSENSUS PLANNING, (hereinafter "Agent") acting as agent on behalf of the property owner, Kevin Patton/PULTE GROUP (hereinafter "Applicant") appeared before the Zoning Hearing Examiner (hereinafter "ZHE") requesting a Variance of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling (hereinafter "Application") upon the real property located at 6709 BORDE ABIERTO ST NW ("Subject Property"). Below are the findings of facts:

**FINDINGS:**

1. Applicant is requesting a Variance of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling.
2. On November 14<sup>th</sup>, 2013, the EPC approved a Site Development Plan for Subdivision for this Subject Property. The Applicant is requesting this variance from the Volcano Cliffs Sector Development Plan General Standards for residential garage requirements. This Subject Property is intended to be developed as a single family subdivision under the Private Commons Development regulations that are contained in Section 14-16-3-16 of the City of Albuquerque Zoning Code.
3. The EPC does not have the authority to grant this type of variance, and Planning Staff determined that these Applications for garage setback standards need to be reviewed 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 garage setback to the façade of the homes, 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”. These garage setback variances are critical to the planning and design of this subdivision and will not be injurious to any of the neighboring property owners [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 property is directly adjacent to the south to an area that was identified by the NWMEP as an area for conservation as it is a buffer for the Petroglyph National Monument [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 10' minimum garage setback from the main facade for a proposed new dwelling.

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.

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application is approved, bring this decision with you when you apply for any related building permit or occupation tax number. Approval of a conditional use or a variance application is void after one year from date of approval if the rights and privileges are granted, thereby have not been executed or utilized.



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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

KEVIN PATTON / PULTE GROUP (CONSENSUS PLANNING, AGENT) requests a special exception to Page 88 VOLCANO CLIFFS SDP: a VARIANCE request of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling for all or a portion of Lot 12, MONTECITO WEST UNIT 1 zoned SU-2 VCRR, located on 8720 PLACITAS ROCA RD NW (D-9)

Special Exception No:.....14ZHE-80368  
Project No: .....Project# 1010320  
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") On the 23rd day of January, 2015 (hereinafter "Hearing") CONSENSUS PLANNING, (hereinafter "Agent") acting as agent on behalf of the property owner, Kevin Patton/PULTE GROUP (hereinafter "Applicant") appeared before the Zoning Hearing Examiner (hereinafter "ZHE") requesting a Variance of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling (hereinafter "Application") upon the real property located at 8720 PLACITAS ROCA RD NW ("Subject Property"). Below are the findings of facts:

**FINDINGS:**

1. Applicant is requesting a Variance of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling.
2. On November 14<sup>th</sup>, 2013, the EPC approved a Site Development Plan for Subdivision for this Subject Property. The Applicant is requesting this variance from the Volcano Cliffs Sector Development Plan General Standards for residential garage requirements. This Subject Property is intended to be developed as a single family subdivision under the Private Commons Development regulations that are contained in Section 14-16-3-16 of the City of Albuquerque Zoning Code.
3. The EPC does not have the authority to grant this type of variance, and Planning Staff determined that these Applications for garage setback standards need to be reviewed 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 garage setback to the façade of the homes, 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”. These garage setback variances are critical to the planning and design of this subdivision and will not be injurious to any of the neighboring property owners [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 property is directly adjacent to the south to an area that was identified by the NWMEP as an area for conservation as it is a buffer for the Petroglyph National Monument [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 10' minimum garage setback from the main facade for a proposed new dwelling.

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:

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application is approved, bring this decision with you when you apply for any related building permit or occupation tax number. Approval of a conditional use or a variance application is void after one year from date of approval if the rights and privileges are granted, thereby have not been executed or utilized.



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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

KEVIN PATTON / PULTE GROUP (CONSENSUS PLANNING, AGENT) requests a special exception to Page 88 VOLCANO CLIFFS SDP: a VARIANCE request of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling for all or a portion of Lot 13, MONTECITO WEST UNIT 1 zoned SU-2 VCRR, located on 8720 PLACITAS ROCA RD NW (D-9)

Special Exception No: .....14ZHE-80370  
Project No: .....Project# 1010320  
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") On the 23rd day of January, 2015 (hereinafter "Hearing") CONSENSUS PLANNING, (hereinafter "Agent") acting as agent on behalf of the property owner, Kevin Patton/PULTE GROUP (hereinafter "Applicant") appeared before the Zoning Hearing Examiner (hereinafter "ZHE") requesting a Variance of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling (hereinafter "Application") upon the real property located at 8720 PLACITAS ROCA RD NW ("Subject Property"). Below are the findings of facts:

**FINDINGS:**

1. Applicant is requesting a Variance of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling.
2. On November 14<sup>th</sup>, 2013, the EPC approved a Site Development Plan for Subdivision for this Subject Property. The Applicant is requesting this variance from the Volcano Cliffs Sector Development Plan General Standards for residential garage requirements. This Subject Property is intended to be developed as a single family subdivision under the Private Commons Development regulations that are contained in Section 14-16-3-16 of the City of Albuquerque Zoning Code.
3. The EPC does not have the authority to grant this type of variance, and Planning Staff determined that these Applications for garage setback standards need to be reviewed 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:*
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  - (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
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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 garage setback to the façade of the homes, 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”. These garage setback variances are critical to the planning and design of this subdivision and will not be injurious to any of the neighboring property owners [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 property is directly adjacent to the south to an area that was identified by the NWMEP as an area for conservation as it is a buffer for the Petroglyph National Monument [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 10' minimum garage setback from the main facade for a proposed new dwelling.

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.

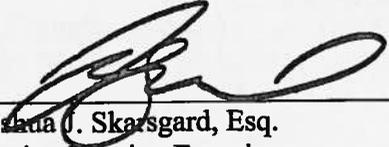
An appeal shall be heard by the Board of Appeals within 45 days of the appeal period and concluded within 75 days of the appeal period. The Planning Division shall give written notice of an appeal, together with a notice of the date, time and place of the hearing to the applicant, a representative of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

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Successful applicants are reminded that other regulations of the City must be complied with, even after approval of a special exception is secured. This decision does not constitute approval of plans for a building permit. If your

application is approved, bring this decision with you when you apply for any related building permit or occupation tax number. Approval of a conditional use or a variance application is void after one year from date of approval if the rights and privileges are granted, thereby have not been executed or utilized.



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Jordana 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

KEVIN PATTON / PULTE GROUP (CONSENSUS PLANNING, AGENT) requests a special exception to Page 88 VOLCANO CLIFFS SDP: a VARIANCE request of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling for all or a portion of Lot 14, MONTECITO WEST UNIT 1 zoned SU-2 VCRR, located on 8724 PLACITAS ROCA RD NW (D-9)

Special Exception No:.....14ZHE-80371  
Project No: .....Project# 1010320  
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") On the 23rd day of January, 2015 (hereinafter "Hearing") CONSENSUS PLANNING, (hereinafter "Agent") acting as agent on behalf of the property owner, Kevin Patton/PULTE GROUP (hereinafter "Applicant") appeared before the Zoning Hearing Examiner (hereinafter "ZHE") requesting a Variance of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling (hereinafter "Application") upon the real property located at 8724 PLACITAS ROCA RD NW ("Subject Property"). Below are the findings of facts:

**FINDINGS:**

1. Applicant is requesting a Variance of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling.
2. On November 14<sup>th</sup>, 2013, the EPC approved a Site Development Plan for Subdivision for this Subject Property. The Applicant is requesting this variance from the Volcano Cliffs Sector Development Plan General Standards for residential garage requirements. This Subject Property is intended to be developed as a single family subdivision under the Private Commons Development regulations that are contained in Section 14-16-3-16 of the City of Albuquerque Zoning Code.
3. The EPC does not have the authority to grant this type of variance, and Planning Staff determined that these Applications for garage setback standards need to be reviewed 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 garage setback to the façade of the homes, 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”. These garage setback variances are critical to the planning and design of this subdivision and will not be injurious to any of the neighboring property owners [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 property is directly adjacent to the south to an area that was identified by the NWMEP as an area for conservation as it is a buffer for the Petroglyph National Monument [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 10' minimum garage setback from the main facade for a proposed new dwelling.

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.

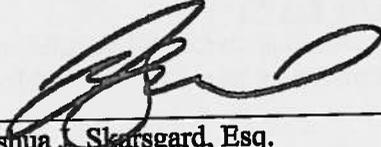
An appeal shall be heard by the Board of Appeals within 45 days of the appeal period and concluded within 75 days of the appeal period. The Planning Division shall give written notice of an appeal, together with a notice of the date, time and place of the hearing to the applicant, a representative of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



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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

KEVIN PATTON / PULTE GROUP (CONSENSUS PLANNING, AGENT) requests a special exception to Page 88 VOLCANO CLIFFS SDP: a VARIANCE request of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling for all or a portion of Lot 16, MONTECITO WEST UNIT 1 zoned SU-2 VCRR, located on 6704 NUEVA PIEDRA ST NW (D-9)

Special Exception No:.....14ZHE-80372  
Project No: .....Project# 1010320  
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") On the 23rd day of January, 2015 (hereinafter "Hearing") CONSENSUS PLANNING, (hereinafter "Agent") acting as agent on behalf of the property owner, Kevin Patton/PULTE GROUP (hereinafter "Applicant") appeared before the Zoning Hearing Examiner (hereinafter "ZHE") requesting a Variance of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling (hereinafter "Application") upon the real property located at 6704 NUEVA PIEDRA ST NW ("Subject Property"). Below are the findings of facts:

**FINDINGS:**

1. Applicant is requesting a Variance of of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling.
2. On November 14<sup>th</sup>, 2013, the EPC approved a Site Development Plan for Subdivision for this Subject Property. The Applicant is requesting this variance from the Volcano Cliffs Sector Development Plan General Standards for residential garage requirements. This Subject Property is intended to be developed as a single family subdivision under the Private Commons Development regulations that are contained in Section 14-16-3-16 of the City of Albuquerque Zoning Code.
3. The EPC does not have the authority to grant this type of variance, and Planning Staff determined that these Applications for garage setback standards need to be reviewed 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 garage setback to the façade of the homes, 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”. These garage setback variances are critical to the planning and design of this subdivision and will not be injurious to any of the neighboring property owners [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 property is directly adjacent to the south to an area that was identified by the NWMEP as an area for conservation as it is a buffer for the Petroglyph National Monument [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 10' minimum garage setback from the main facade for a proposed new dwelling.

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.

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application is approved, bring this decision with you when you apply for any related building permit or occupation tax number. Approval of a conditional use or a variance application is void after one year from date of approval if the rights and privileges are granted, thereby have not been executed or utilized.



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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

KEVIN PATTON / PULTE GROUP (CONSENSUS PLANNING, AGENT) requests a special exception to Page 88 VOLCANO CLIFFS SDP: a VARIANCE request of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling for all or a portion of Lot 17, MONTECITO WEST UNIT 1 zoned SU-2 VCRR, located on 6708 NUEVA PIEDRA ST NW (D-9)

Special Exception No: .....14ZHE-80374  
Project No: .....Project# 1010320  
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") On the 23rd day of January, 2015 (hereinafter "Hearing") CONSENSUS PLANNING, (hereinafter "Agent") acting as agent on behalf of the property owner, Kevin Patton/PULTE GROUP (hereinafter "Applicant") appeared before the Zoning Hearing Examiner (hereinafter "ZHE") requesting a Variance of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling (hereinafter "Application") upon the real property located at 6708 NUEVA PIEDRA ST NW ("Subject Property"). Below are the findings of facts:

**FINDINGS:**

1. Applicant is requesting a Variance of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling.
2. On November 14<sup>th</sup>, 2013, the EPC approved a Site Development Plan for Subdivision for this Subject Property. The Applicant is requesting this variance from the Volcano Cliffs Sector Development Plan General Standards for residential garage requirements. This Subject Property is intended to be developed as a single family subdivision under the Private Commons Development regulations that are contained in Section 14-16-3-16 of the City of Albuquerque Zoning Code.
3. The EPC does not have the authority to grant this type of variance, and Planning Staff determined that these Applications for garage setback standards need to be reviewed 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 garage setback to the façade of the homes, 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”. These garage setback variances are critical to the planning and design of this subdivision and will not be injurious to any of the neighboring property owners [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 property is directly adjacent to the south to an area that was identified by the NWMEP as an area for conservation as it is a buffer for the Petroglyph National Monument [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 10' minimum garage setback from the main facade for a proposed new dwelling.

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.

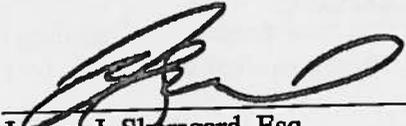
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application is approved, bring this decision with you when you apply for any related building permit or occupation tax number. Approval of a conditional use or a variance application is void after one year from date of approval if the rights and privileges are granted, thereby have not been executed or utilized.



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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

KEVIN PATTON / PULTE GROUP (CONSENSUS PLANNING, AGENT) requests a special exception to Page 88 VOLCANO CLIFFS SDP: a VARIANCE request of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling for all or a portion of Lot 18, MONTECITO WEST UNIT 1 zoned SU-2 VCRR, located on 8735 PLACITAS ROCA RD NW (D-9)

Special Exception No:.....14ZHE-80375  
Project No: .....Project# 1010320  
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") On the 23rd day of January, 2015 (hereinafter "Hearing") CONSENSUS PLANNING, (hereinafter "Agent") acting as agent on behalf of the property owner, Kevin Patton/PULTE GROUP (hereinafter "Applicant") appeared before the Zoning Hearing Examiner (hereinafter "ZHE") requesting a Variance of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling (hereinafter "Application") upon the real property located at 8735 PLACITAS ROCA RD NW ("Subject Property"). Below are the findings of facts:

**FINDINGS:**

1. Applicant is requesting a Variance of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling
2. On November 14<sup>th</sup>, 2013, the EPC approved a Site Development Plan for Subdivision for this Subject Property. The Applicant is requesting this variance from the Volcano Cliffs Sector Development Plan General Standards for residential garage requirements. This Subject Property is intended to be developed as a single family subdivision under the Private Commons Development regulations that are contained in Section 14-16-3-16 of the City of Albuquerque Zoning Code.
3. The EPC does not have the authority to grant this type of variance, and Planning Staff determined that these Applications for garage setback standards need to be reviewed 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 garage setback to the façade of the homes, 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”. These garage setback variances are critical to the planning and design of this subdivision and will not be injurious to any of the neighboring property owners [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 property is directly adjacent to the south to an area that was identified by the NWMEP as an area for conservation as it is a buffer for the Petroglyph National Monument [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 10' minimum garage setback from the main facade for a proposed new dwelling.

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.

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application is approved, bring this decision with you when you apply for any related building permit or occupation tax number. Approval of a conditional use or a variance application is void after one year from date of approval if the rights and privileges are granted, thereby have not been executed or utilized.



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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

KEVIN PATTON / PULTE GROUP (CONSENSUS PLANNING, AGENT) requests a special exception to Page 88 VOLCANO CLIFFS SDP: a VARIANCE request of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling for all or a portion of Lot 19, MONTECITO WEST UNIT 1 zoned SU-2 VCRR, located on 8731 PLACITAS ROCA RD NW (D-9)

Special Exception No:.....14ZHE-80376  
Project No: .....Project# 1010320  
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") On the 23rd day of January, 2015 (hereinafter "Hearing") CONSENSUS PLANNING, (hereinafter "Agent") acting as agent on behalf of the property owner, Kevin Patton/PULTE GROUP (hereinafter "Applicant") appeared before the Zoning Hearing Examiner (hereinafter "ZHE") requesting a Variance of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling (hereinafter "Application") upon the real property located at 8731 PLACITAS ROCA RD NW ("Subject Property"). Below are the findings of facts:

**FINDINGS:**

1. Applicant is requesting a Variance of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling.
2. On November 14<sup>th</sup>, 2013, the EPC approved a Site Development Plan for Subdivision for this Subject Property. The Applicant is requesting this variance from the Volcano Cliffs Sector Development Plan General Standards for residential garage requirements. This Subject Property is intended to be developed as a single family subdivision under the Private Commons Development regulations that are contained in Section 14-16-3-16 of the City of Albuquerque Zoning Code.
3. The EPC does not have the authority to grant this type of variance, and Planning Staff determined that these Applications for garage setback standards need to be reviewed 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 garage setback to the façade of the homes, 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”. These garage setback variances are critical to the planning and design of this subdivision and will not be injurious to any of the neighboring property owners [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 property is directly adjacent to the south to an area that was identified by the NWMEP as an area for conservation as it is a buffer for the Petroglyph National Monument [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 10' minimum garage setback from the main facade for a proposed new dwelling.

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.

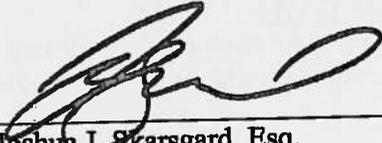
An appeal shall be heard by the Board of Appeals within 45 days of the appeal period and concluded within 75 days of the appeal period. The Planning Division shall give written notice of an appeal, together with a notice of the date, time and place of the hearing to the applicant, a representative of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

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application is approved, bring this decision with you when you apply for any related building permit or occupation tax number. Approval of a conditional use or a variance application is void after one year from date of approval if the rights and privileges are granted, thereby have not been executed or utilized.



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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



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

KEVIN PATTON / PULTE GROUP (CONSENSUS PLANNING, AGENT) requests a special exception to Page 88 VOLCANO CLIFFS SDP: a VARIANCE request of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling for all or a portion of Lot 20, MONTECITO WEST UNIT 1 zoned SU-2 VCRR, located on 8727 PLACITAS ROCA RD NW (D-9)

Special Exception No: .....14ZHE-80377  
Project No: .....Project# 1010320  
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") On the 23rd day of January, 2015 (hereinafter "Hearing") CONSENSUS PLANNING, (hereinafter "Agent") acting as agent on behalf of the property owner, Kevin Patton/PULTE GROUP (hereinafter "Applicant") appeared before the Zoning Hearing Examiner (hereinafter "ZHE") requesting a Variance of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling (hereinafter "Application") upon the real property located at 8727 PLACITAS ROCA RD NW ("Subject Property"). Below are the findings of facts:

**FINDINGS:**

1. Applicant is requesting a Variance of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling.
2. On November 14<sup>th</sup>, 2013, the EPC approved a Site Development Plan for Subdivision for this Subject Property. The Applicant is requesting this variance from the Volcano Cliffs Sector Development Plan General Standards for residential garage requirements. This Subject Property is intended to be developed as a single family subdivision under the Private Commons Development regulations that are contained in Section 14-16-3-16 of the City of Albuquerque Zoning Code.
3. The EPC does not have the authority to grant this type of variance, and Planning Staff determined that these Applications for garage setback standards need to be reviewed 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:*
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  - (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 garage setback to the façade of the homes, 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”. These garage setback variances are critical to the planning and design of this subdivision and will not be injurious to any of the neighboring property owners [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 property is directly adjacent to the south to an area that was identified by the NWMEP as an area for conservation as it is a buffer for the Petroglyph National Monument [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 10' minimum garage setback from the main facade for a proposed new dwelling.

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.

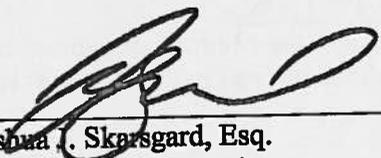
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Joshua J. Skarsgard, Esq.  
Zoning Hearing Examiner

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

KEVIN PATTON / PULTE GROUP (CONSENSUS PLANNING, AGENT) requests a special exception to Page 88 VOLCANO CLIFFS SDP: a VARIANCE request of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling for all or a portion of Lot 21, MONTECITO WEST UNIT 1 zoned SU-2 VCRR, located on 8723 PLACITAS ROCA RD NW (D-9)

Special Exception No:.....14ZHE-80378  
Project No: .....Project# 1010320  
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") On the 23rd day of January, 2015 (hereinafter "Hearing") CONSENSUS PLANNING, (hereinafter "Agent") acting as agent on behalf of the property owner, Kevin Patton/PULTE GROUP (hereinafter "Applicant") appeared before the Zoning Hearing Examiner (hereinafter "ZHE") requesting a Variance of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling (hereinafter "Application") upon the real property located at 8723 PLACITAS ROCA RD NW ("Subject Property"). Below are the findings of facts:

**FINDINGS:**

1. Applicant is requesting a Variance of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling.
2. 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:*
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  - (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.*

3. The EPC does not have the authority to grant this type of variance, and Planning Staff determined that these Applications for garage setback standards need to be reviewed 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:*
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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 garage setback to the façade of the homes, 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". These garage setback variances are critical to the planning and design of this subdivision and will not be injurious to any of the neighboring property owners [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.
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7. 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 WITH CONDITIONS** of a **VARIANCE** of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling.

**CONDITIONS OF APPROVAL:**

- A. The Applicant shall \_\_\_
- B. The Applicant shall \_\_\_

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:

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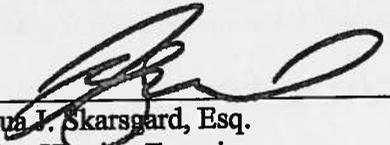
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CITY OF ALBUQUERQUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
ZONING HEARING EXAMINER  
NOTIFICATION OF DECISION

KEVIN PATTON / PULTE GROUP (CONSENSUS PLANNING, AGENT) requests a special exception to Page 88 VOLCANO CLIFFS SDP: a VARIANCE request of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling for all or a portion of Lot 22, MONTECITO WEST UNIT 1 zoned SU-2 VCRR, located on 8719 PLACITAS ROCA RD NW (D-9)

Special Exception No:.....14ZHE-80379  
Project No: .....Project# 1010320  
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") On the 23rd day of January, 2015 (hereinafter "Hearing") CONSENSUS PLANNING, (hereinafter "Agent") acting as agent on behalf of the property owner, Kevin Patton/PULTE GROUP (hereinafter "Applicant") appeared before the Zoning Hearing Examiner (hereinafter "ZHE") requesting a Variance of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling (hereinafter "Application") upon the real property located at 8719 PLACITAS ROCA RD NW ("Subject Property"). Below are the findings of facts:

**FINDINGS:**

1. Applicant is requesting a Variance of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling.
2. On November 14<sup>th</sup>, 2013, the EPC approved a Site Development Plan for Subdivision for this Subject Property. The Applicant is requesting this variance from the Volcano Cliffs Sector Development Plan General Standards for residential garage requirements. This Subject Property is intended to be developed as a single family subdivision under the Private Commons Development regulations that are contained in Section 14-16-3-16 of the City of Albuquerque Zoning Code.
3. The EPC does not have the authority to grant this type of variance, and Planning Staff determined that these Applications for garage setback standards need to be reviewed 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 garage setback to the façade of the homes, 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”. These garage setback variances are critical to the planning and design of this subdivision and will not be injurious to any of the neighboring property owners [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 property is directly adjacent to the south to an area that was identified by the NWMEP as an area for conservation as it is a buffer for the Petroglyph National Monument [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 10' minimum garage setback from the main facade for a proposed new dwelling.

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.



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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

KEVIN PATTON / PULTE GROUP (CONSENSUS PLANNING, AGENT) requests a special exception to Page 88 VOLCANO CLIFFS SDP: a VARIANCE request of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling for all or a portion of Lot 23, MONTECITO WEST UNIT 1 zoned SU-2 VCRR, located on 8715 PLACITAS ROCA RD NW (D-9)

Special Exception No:.....14ZHE-80380  
Project No: .....Project# 1010320  
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") On the 23rd day of January, 2015 (hereinafter "Hearing") CONSENSUS PLANNING, (hereinafter "Agent") acting as agent on behalf of the property owner, Kevin Patton/PULTE GROUP (hereinafter "Applicant") appeared before the Zoning Hearing Examiner (hereinafter "ZHE") requesting a Variance of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling (hereinafter "Application") upon the real property located at 8715 PLACITAS ROCA RD NW ("Subject Property"). Below are the findings of facts:

**FINDINGS:**

1. Applicant is requesting a Variance of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling.
2. 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.*

3. The EPC does not have the authority to grant this type of variance, and Planning Staff determined that these Applications for garage setback standards need to be reviewed 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 garage setback to the façade of the homes, 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". These garage setback variances are critical to the planning and design of this subdivision and will not be injurious to any of the neighboring property owners [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 substantial justice will be done if this Application is approved. [as required pursuant to Section § 14-16-4-2 (C) (2) (d)]
7. 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 WITH CONDITIONS** of a **VARIANCE** of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling.

**CONDITIONS OF APPROVAL:**

- A. The Applicant shall \_\_\_
- B. The Applicant shall \_\_\_

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.



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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

KEVIN PATTON / PULTE GROUP (CONSENSUS PLANNING, AGENT) requests a special exception to Page 88 VOLCANO CLIFFS SDP: a VARIANCE request of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling for all or a portion of Lot 24, MONTECITO WEST UNIT 1 zoned SU-2 VCRR, located on 8709 PLACITAS ROCA RD NW (D-9)

Special Exception No:.....14ZHE-80381  
Project No: .....Project# 1010320  
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") On the 23rd day of January, 2015 (hereinafter "Hearing") CONSENSUS PLANNING, (hereinafter "Agent") acting as agent on behalf of the property owner, Kevin Patton/PULTE GROUP (hereinafter "Applicant") appeared before the Zoning Hearing Examiner (hereinafter "ZHE") requesting a Variance of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling (hereinafter "Application") upon the real property located at 8709 PLACITAS ROCA RD NW ("Subject Property"). Below are the findings of facts:

**FINDINGS:**

1. Applicant is requesting a Variance of 8' to the required 10' minimum garage setback from the main facade for a proposed new dwelling.
2. On November 14<sup>th</sup>, 2013, the EPC approved a Site Development Plan for Subdivision for this Subject Property. The Applicant is requesting this variance from the Volcano Cliffs Sector Development Plan General Standards for residential garage requirements. This Subject Property is intended to be developed as a single family subdivision under the Private Commons Development regulations that are contained in Section 14-16-3-16 of the City of Albuquerque Zoning Code.
3. The EPC does not have the authority to grant this type of variance, and Planning Staff determined that these Applications for garage setback standards need to be reviewed 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 garage setback to the façade of the homes, 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”. These garage setback variances are critical to the planning and design of this subdivision and will not be injurious to any of the neighboring property owners [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 property is directly adjacent to the south to an area that was identified by the NWMEP as an area for conservation as it is a buffer for the Petroglyph National Monument [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 10' minimum garage setback from the main facade for a proposed new dwelling.

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:

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application is approved, bring this decision with you when you apply for any related building permit or occupation tax number. Approval of a conditional use or a variance application is void after one year from date of approval if the rights and privileges are granted, thereby have not been executed or utilized.



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