



Mayor Timothy M. Keller

CITY OF ALBUQUERQUE

Albuquerque, New Mexico

Planning Department

INTER-OFFICE MEMORANDUM

February 9, 2021

TO: Cynthia Borrego, President, City Council

FROM: Brennon Williams, Planning Director *BWilliams*

SUBJECT: AC-21-2, Project-2019-003219, VA-2020-00386, VA-2021-00007: Garcia Kramer & Associates, agent for Charter School Solutions, appeals the Zoning Hearing Examiners decision to Deny a variance of 120 feet to the minimum required 660-foot distance from the outer edge of Tramway Blvd right-of-way for a proposed electronic sign for Lot E1A2, Panorama Heights Addn, located at 99999 Lomas BLVD NE, zoned MX-M [Section 14-16-5-12(H)(2)(c)]

OVERVIEW

Applicant filed a request for a variance of 120 feet to the minimum required 660 foot distance from the outer edge of Tramway Boulevard right-of-way for a proposed electronic sign. The request was scheduled and heard at the December 15, 2020 public hearing.

In the Notice of Decision issued December 30, 2020, the Zoning Hearing Examiner found that the applicant did not meet the Variance-Review and Decision Criteria in Section 14-16-6-6(N)(3)(a) of the Integrated Development Ordinance. Specifically, because the use is prohibited by the Integrated Development Ordinance and approval of the application would undermine its purpose.

BASIS FOR APPEAL AND STAFF RESPONSE

Section 14-16-6-4(V)(4) outlines the applicable criteria for the appeal in determining whether the Zoning Hearing Examiner erred in their decision:

6-4(V)(4) Criteria for Decision

The criteria for review of an appeal shall be whether the decision-making body or the prior appeal body made 1 of the following mistakes:

6-4(V)(4)(a) The decision-making body or the prior appeal body acted fraudulently, arbitrarily, or capriciously.

6-4(V)(4)(b) The decision being appealed is not supported by substantial evidence.

6-4(V)(4)(c) The decision-making body or the prior appeal body erred in applying the requirements of this IDO (or a plan, policy, or regulation referenced in the review and decision-making criteria for the type of decision being appealed).

The reasons for the appeal, excerpted from Appellant's letter, are listed below, with a bulleted, italicized response from the Planner for the Zoning Hearing Examiner. Please see the Appellant's letter and submittal packet for additional details.

The ZHE's Decision in This Matter Constituted an Abuse of Discretion and Went Outside His Scope of Authority

Rather than objectively weigh the evidence presented in the application and at the hearing for meeting the criteria for a variance approval, the ZHE chose to focus and place considerable weight on the question of whether a variance to the 660' dimension could be even considered if electronic signs are "prohibited".

And since electronic signs are already an allowed "use" in the MX-M zone, this variance request should be allowed to proceed for an exception to the dimensional standard of 660' pursuant to the definition of a variance.

- *The Integrated Development Ordinance specifically prohibits electronic signs within 660 feet of Tramway Blvd per Section 5-12(H)(2)(c) Prohibited Areas.*

The ZHE Erred in Applying Adopted City Plans, Policies, and Ordinances in Arriving at the Decision

The ZHE failed to take into consideration adopted elements of the IDO, specifically the definition of a "variance"- Reference 14-16-7-1.

- *Appellant requested a variance to a dimensional standard for a use that is prohibited.*
- *The allowable use of premises may never be changed via a Variance.*

There is no analysis or explanation that was given in the ZHE "Findings" as to why the application "undermined the intent and spirit of the IDO"

- *Finding #8: Section 14-16- 5-12(H)(2)(c) specifically prohibits electronic signs within 660 feet of the outer edge of Tramway.*
- *Finding #9: Approval of the variance would materially undermine the intent and purpose of the IDO.*
- *Finding #10 Given that criterion (4) in Section 14-16-6-6(N)(3)(a) (Variance-Review and Decision Criteria) has not been satisfied, the variance must be denied, and it is therefore unnecessary to examine any other element required to establish a variance.*

The ZHE's Decision was Arbitrary and Capricious And Should be Reversed

In his ruling, the ZHE failed to specify the basis on which the ruling was made, including naming any injury that would be caused or citing any of the twelve provisions – subsections 1-3(A) thru 1-3(L) of the IDO's "Purpose" 14-16-1-3, which according to Findings #9 of the ZHE decision, this section was the reason for denial of the variance.

- *See Findings 8-10 listed above. Because the use is prohibited by the Integrated Development Ordinance, and approval would undermine its purpose, the Zoning Hearing Examiner denied the application.*

/ Lorena Patten-Quintana /
Lorena Patten-Quintana, ZHE Planner
Office of the Zoning Hearing Examiner
City of Albuquerque Planning Department





AC-21-2 Memo

Final Audit Report

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