

PLANNING DEPARTMENT
URBAN DESIGN & DEVELOPMENT DIVISION
600 2nd Street NW, 3rd Floor, Albuquerque, NM 87102
P.O. Box 1293, Albuquerque, NM 87103
Office (505) 924-3860 Fax (505) 924-3339



OFFICIAL NOTIFICATION OF DECISION

November 16, 2023

Frank J. & Clarissa J. Gonzales
5505 Valiente Rd. NW
Albuquerque, NM 87120

Project # PR-2023-009178
VA-2023-00246 – Variance - EPC

LEGAL DESCRIPTION:

Frank and Clarissa Gonzales request a variance to VPO 2-Northwest Mesa Escarpment View Protection Overlay Zone, to allow additional building height in the VPO-2 Height Restrictions Sub-area, for all or a portion of Lot 21, Block 1, Unit 27, Volcano Cliffs, located at 5505 Valiente Rd. NW, between Calle Norteña NW and the Piedras Marcadas Major Public Open Space (MPOS), approximately 0.4 acre (C-11-Z)

Staff Planner: Catherine Heyne & Catalina Lehner

On November 16, 2023 the Environmental Planning Commission (EPC) voted to APPROVE Project # PR-2023-009178, VA-2023-00246 – Variance – EPC based on the following findings and subject to the following Conditions of Approval:

1. The request is for a Variance - EPC for a property legally described as all or a portion of Lot 21, Block 1, Unit 27, Volcano Cliffs located at 5505 Valiente Rd NW, between Calle Norteña NW and the Piedras Marcadas Major Public Open Space (MPOS), approximately 0.4-acres (the “subject site”).
2. The subject site is zoned R-1D (Residential, Single-Family—Extra Large Lot—Zone District) and is in an Area of Consistency. The subject site is not in a designated Activity Center or Corridor as designated by the Comprehensive Plan.
3. The subject site is located within the Northwest Volcano Mesa View Protection Overlay (VPO) Zone, VPO-2, and within the Volcano Mesa Character Protection Overlay (CPO) Zone, CPO-13. The VPO-2 regulations are designed to protect views looking to and from the Petroglyph National Monument. This height variance request will follow the guidelines for VPO-2, which supersede regulations for CPO-13.
4. The applicant is requesting a 3-foot 5.6-inch variance to the 15-foot building height maximum as measured from the natural grade in the Height Restriction Sub-Area of the Northwest Mesa Escarpment – VPO-2. The maximum structure height allowed through the Variance-EPC process is 19 feet from finished grade.

5. An application for a Variance – EPC shall be approved if it meets all of the criteria pursuant to 14-16-6-6(N)(3)(a)- Variance – EPC Review and Decision Criteria, which staff finds the applicant does not fully meet.
 - A. 6-6(N)(3)(a) 1. There are special circumstances applicable to a single lot that are not self-imposed and that do not apply generally to other property in the same zone district and vicinity, including but not limited to size, shape, topography, location, surroundings, physical characteristics, natural forces, or by government actions for which no compensation was paid. Such special circumstances of the lot either create an extraordinary hardship in the form of a substantial and unjustified limitation on the reasonable use or economic return on the property, or practical difficulties result from strict compliance with the minimum standards.

Applicants indicate that site slope and drainage constrain the usability of the site. The highest point of the subject site is the SW corner at an elevation of 5305 feet which slopes downward to the subject site’s northeast corner at approximately 5296 feet. Natural grade is at an elevation of 5298.5 feet. To accommodate the slope and required drainage for the site, the proposed structure pad will be leveled to an elevation of 5299.3 feet, or 0.8 feet (9.6”) above the natural grade resulting in an allowable structure height of 14 feet 2.4 inches without the requested variance. For proper drainage of the site, Professional Engineer Luehring, PE included an on-site drainage ponding area to manage stormwater to ensure proper drainage during a storm event (See Attachment).

A typical single-story home in the Albuquerque area stands at 15 feet tall. As such, to build at the allowed IDO maximum 15-foot height above natural grade would create a hardship in the form of a reduction in ceiling height. A 14-foot 2.4-inch-tall structure may cause substantial and unjustified limitation on the reasonable use or economic return on the property, or practical difficulties would result from strict compliance with the minimum standards. The applicants have sufficiently justified a height variance for a final building height above the 15-foot above natural grade but not for a structure taller than the IDO allowed 15 feet.

Although the drainage plan has been approved by the City as is, per a discussion with the City Hydrology Principal Engineer, it is possible to reconfigure the proposed structure to step down across the site so that the garage sits at a higher elevation than the dwelling space. Also, although not typical, it is possible to position the driveway at a grade of up to 25 percent to accommodate for a lower finished grade. It was also suggested that it might be possible to reduce the floor footprint to shift the structure further back on the property to allow for a lower pad and the proposed additional structure height (17 feet 8 inches).

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- B. 6-6(N)(3)(a) 2. The Variance will not be materially contrary to the public safety, health, or welfare.

The subject site is located within 565 feet of the Petroglyph Monument escarpment edge with City owned land adjacent to the north and is approximately 100 feet from the Monument boundary to the east. The subject site is located in very close proximity to a very significant and unique part of Albuquerque that is greatly valued by not only community members but appreciated by visitors from around the world. Although the request for additional structure height is minimal, Staff disagrees with the applicants that there is “no direct impact to public safety, health, or welfare”.

The 15-foot structure height restriction as outlined by the Northwest Mesa Escarpment VPO-2 is set in place to preserve and enhance the natural and cultural characteristics and features that contribute to the distinct identity of communities, neighborhoods, and cultural landscapes per Goal 11.3 Cultural Landscapes (Protect, reuse, and/or enhance significant cultural landscapes as important contributors to our heritage and rich and complex identities) of the Comprehensive Plan. That is, restrictions are implemented to preserve views, reduce visual impact, and minimize the environmental impacts of development, especially within environmentally sensitive areas. Additionally, view conservation offers relief from the built urban environment. Open space constitutes an important resource that demands special landscape and architectural treatments. The presented justification does not adequately show that the Variance – EPC will not be materially contrary to the public safety, health, or welfare.

- C. 6-6(N)(3)(a) 3. The Variance does not cause significant material adverse impacts on surrounding properties or infrastructure improvements in the vicinity.
The applicants wish to strengthen the area by quality development that is consistent with the distinct character of communities (Comp Plan Policy 4.1.1- Distinct Communities) that will further area development and increase area home values. However, even though height variances are decided on a case by case basis, allowing such variances without a definable need, sets a precedence for increasing structure heights within the Northwest Mesa Escarpment View Protection Overlay (VPO) area. Aggregated through time, these changes can reduce the purpose, intent, and impact of IDO direction, thereby actually having significant material adverse impacts on surrounding properties or infrastructure improvements in the vicinity due to the loss of valuable resources: area views and Open Space (see Comp Plan Policy 4.1.5- Natural Resources, Policy 5.6.1- Community Green Space, Policy 7.3.1- Natural and Cultural Features, Policy 7.3.5- Development Quality, Policy 7.5.2- Site Design, Goal 9.2- Sustainable Design).
- D. 6-6(N)(3)(a) 4. The Variance will not materially undermine the intent and purpose of this IDO, the applicable zone district, or any applicable Overlay Zone.
The height variance request of 3 feet 5.6 inches (pad plus 17-foot 8-inch structure) or 2 feet 8 inches for the additional building height, falls within the height variance criteria maximum of 19 feet. However, allowing a variance for a structure above the original 15-foot allowable structure height reduces the efficacy of the Northwest Mesa Escarpment View Protection Overlay (VPO-2), which, as responded to in Subsection 6-6(N)(3)(a)(3), can through time, reduce the impact of such regulation and materially undermine the intent and purpose of this IDO and applicable Overlay Zone.
- E. 6-6(N)(3)(a) 5. The Variance approved is the minimum necessary to avoid extraordinary hardship or practical difficulties.
Applicants cite “habitable and economical” reasons for requesting a 2-foot 8-inch height variance with the average height of the proposed structure between ridge and eaves reaching 17

feet 8 inches. The tallest structural feature, an entry tower, rises to 18 feet 11 inches, 1 inch below the maximum height allowed of 19 feet. There was no specific extraordinary hardship or practical difficulties presented as to why plans for a 15-foot tall structure were not selected as at least 50 percent of the proposed building is designed for the 15-foot-tall allowance.

6. 14-16-6-6(N)(3)(c). Northwest Mesa Escarpment – VPO-2: An application for a Variance from the 15-foot structure height limit in the Height Restriction Sub-area in Subsection 14-16-3- 6(E)(3) (Northwest Mesa Escarpment – VPO-2) shall be approved if it meets the criteria all of the following criteria: Hardship and Visual Impact. The Hardship test is not met.

- A. 6-6(N)(3)(c) 1. Hardship: The intent of the view regulations in Section 14-16-3-6(E) (Northwest Mesa Escarpment – VPO-2) must be met. The burden is on the applicant to demonstrate that strict adherence to VPO-2 building height regulations would render the lot undevelopable because of physical and/or engineering constraints (e.g. rock outcroppings, street grades, drainage requirements, ADA compliance, utility design, etc.).

There are no special circumstances that apply to the subject site that would render the lot undevelopable to the 15-foot above natural grade with a chosen 15-foot plan because of physical and/or engineering constraints (e.g. rock outcroppings, street grades, drainage requirements, ADA compliance, utility design, etc.). Although the drainage plan has been approved by the City as is, per a discussion with the City Hydrology Principal Engineer, it is possible to reconfigure the proposed structure to step down across the site so that the garage sits at a higher elevation than the dwelling space. Also, although not typical, it is possible to position the driveway at a grade up to 25 percent to accommodate for a lower finished grade towards the back of the lot. It was also suggested that it might be possible to reduce the floor footprint to shift the structure further back on the property to maintain a level grade, which suggests that the site can be safely developed with a pad leveled at natural grade.

The applicant states that “special circumstances of the lot create an extraordinary hardship in the form of a substantial and unjustified limitation on the reasonable use or economic return on the property as building costs would never be recouped nor would the building be able to be sold if built to those standards rendering the lot undevelopable.” However, no specifics were provided. Three adjacent homes along the south side of Valiente Rd NW were built to the 15-foot allowance for the VPO-2 and are currently occupied.

Applicants also included the hardship of “several maps to include the ‘Volcano Mesa Escarpment Map’ as well as the ‘SAD 228 Map’ from the City of Albuquerque website demonstrate the property was outside the height restricted zone”. However, it is the responsibility of the property owner and/or builder to be familiar with City regulation. The Planning Department Staff is available to answer any questions prior to submitting for a permit.

- B. 6-6(N)(3)(c) 2. Visual Impact: The impact of the proposed development on views to and from the escarpment will be the same as, or less than, the impact if the 15-foot height limit were met.

The impact of the proposed development on views to and from the escarpment would generally be the same as or less than the impact if the 15-foot height limit were met. The applicants oriented the highest portions of the house (18 feet 11 inches) perpendicular to the escarpment to minimize the impact of the proposed development to a height of 17 foot 8 inches above the final

pad for about a quarter of the structure's length when facing east looking toward the Major Public Open Space, Petroglyph National Monument escarpment.

Although the proposed West Elevation does not appear to obscure the Sandia Mountains, the purpose of the VPO-2 height restrictions is to preserve the views to and from the escarpment. A building, regardless of height will restrict views by the fact that there is a solid mass in place of a previously open space with natural features.

The applicant has provided evidence that the proposed development will have a marginally greater visual impact than if the 15-foot height limit were met. Site plans, site sections, and site elevations are included in Staff analysis and provided in Section III above of this report (see p. 8).

7. The affected, registered neighborhood organizations are the Paradise Hills Civic Association, Taylor Ranch Neighborhood Association, and the Westside Coalition of Neighborhood Associations, that were notified as required. Property owners within 100 feet of the subject site were also notified as required.
8. A Post-Submittal Facilitated Meeting was requested and is scheduled via Zoom for November 9, 2023, from 6 pm to 8 pm. The facilitated meeting was held and staff received Land Use Facilitation Program Meeting Notes, which were included in the 48-hour materials to the EPC. Two members from the community as well as representatives from Taylor Ranch NA (TRNA); Westside Coalition of NA's (WCNA); and Santa Fe Village NA (SFVNA) attended. After discussion with the Applicants regarding the concerns about the proposed variance, community members voiced support for the height of the pad above the natural grade but oppose the request for a structure taller than the allowed 15-foot height restriction in VPO-2.
9. Staff received a letter of opposition from the National Park Service (NPS) as of this writing. The NPS is concerned that an increase in height would result in a substantial visual intrusion on the highly sensitive area adjacent to the monument that sets a precedent for taller structures near the Petroglyph National Monument/MPOS.
10. Staff finds that the application for a variance-EPC in VPO-2 does not meet all requirements pursuant to IDO section 14-16-6-6(N), Variance – EPC. A request for a Variance-EPC shall be approved if it meets all review and decision criteria. The applicant has generally met the requirements pursuant to IDO 14-16-3-6(E)(4) - Building and Structure Height in VPO-2 Height Restrictions Sub-area.
11. Staff finds that A variance of 10 inches to allow for the pad of the structure is justifiable. Conditions of approval are included with this request.

CONDITIONS OF APPROVAL

1. Future construction shall adhere to all requirements in IDO subsection 14-16-3-6(E) Northwest Mesa Escarpment – VPO-2 (aside from the granted 10-inch variance) and requirements in IDO subsection 14-16-3-4(N) Volcano Mesa – CPO-13.
2. The height of the structure shall be kept to 15 feet to be consistent with surrounding residential structures. A variance of 10 inches is allowed for the pad.

APPEAL: If you wish to appeal this decision, you must do so within 15 days of the EPC's decision or by **December 4, 2023**. The date of the EPC's decision is not included in the 15-day period for filing an appeal, and if the 15th day falls on a Saturday, Sunday or Holiday, the next working day is considered as the deadline for filing the appeal.

For more information regarding the appeal process, please refer to Section 14-16-6-4(V) of the Integrated Development Ordinance (IDO), Administration and Enforcement. A Non-Refundable filing fee will be calculated at the Land Development Coordination Counter and is required at the time the appeal is filed. It is not possible to appeal an EPC Recommendation to the City Council since this is not a final decision.

You will receive notification if any person files an appeal. If there is no appeal, you can receive Building Permits at any time after the appeal deadline quoted above, provided all conditions imposed at the time of approval have been met. Successful applicants are reminded that other regulations of the IDO must be complied with, even after approval of the referenced application(s).

Sincerely,

Catalina Lehner

for Alan M. Varela,
Planning Director

AV/CL/CH

cc: Frank J. & Clarissa J. Gonzales, fgonzal2@outlook.com
Terry O'Mara tomara66@gmail.com
Renee Horvath, aboard111@gmail.com
Legal, dking@cabq.gov
EPC File