

CITY OF ALBUQUERQUE



PLANNING DEPARTMENT
URBAN DESIGN & DEVELOPMENT DIVISION
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OFFICIAL NOTIFICATION OF DECISION

September 11, 2015

RTR, LLC
PO Box 27560
ABQ, NM 87104

Project# 1009178
15EPC-40035 Site Development Plan for
Subdivision

LEGAL DESCRIPTION:

For Lots 1-P1 thru 39-P1, Tiburon Heights Subdivision, zoned SU-2/VCLL, located on Petirrojo Rd. NW, between Kimmick Dr. NW and Compass Dr. NW, containing approximately 8 acres. (D-10)
Staff Planner: Catalina Lehner

PO Box 1293 On September 10, 2015, the Environmental Planning Commission (EPC) voted to DENY Project #1009178/15EPC-40035, a Site Development Plan for Subdivision, based on the following findings:

FINDINGS:

- Albuquerque
- New Mexico 87103
- www.cabq.gov
1. The request is for certain deviations to the regulatory requirements of the Volcano Cliffs Sector Development Plan (VCSDP) and a site development plan for subdivision (an exhibit) for an approximately 8 acre, vacant lot (the "subject site"). The subject site is located east of the intersection of Unser Blvd. NW and Rainbow Blvd. NW and fronts Petirrojo Rd. NW, which is between Kimmick Dr. NW and Compass Dr. NW.
 2. The subject site is located within the boundaries of the Volcano Cliffs Sector Development Plan (VCSDP), which established zoning and contains General Design Standards and General Regulations that apply to all development in the Plan area.
 3. The subject site is zoned SU-2/VCLL (Volcano Cliffs Large Lot) pursuant to the VCSDP. The applicant requests three major deviations to the regulations of the VCLL zone: front, side and rear yard setback. All constitute a deviation of 20% to a dimensional standard.
 4. The VCSDP deviation process requires that deviations between 10% and 20% are reviewed by the Environmental Planning Commission (EPC). Deviations under 10% are approvable by Staff. Deviations greater than 20% are not allowed.
 5. The Albuquerque/Bernalillo County Comprehensive Plan, the West Side Strategic Plan, the Northwest Mesa Escarpment Plan, the VCSDP and the City of Albuquerque Zoning Code are incorporated herein by reference and made part of the record for all purposes.

OFFICIAL NOTICE OF DECISION

Project #1009178

September 10, 2015

Page 2 of 5

6. The request does not further the following, applicable Comprehensive Plan policies:
 - A. Policy II.B.5a- full range of urban land uses. The request would not contribute to a full range of urban land uses because the area is already dominated by subdivisions of single-family homes, most of which are on the VCSDP's large lots and of a similar density.
 - B. Policy II.B.5d-new development/environment/resources. The request would result in a new subdivision that would be denser than the platted subdivisions nearby. The smallest adjacent lots are approximately 0.33 acre, whereas most lots on the subject site would be approximately 0.15 acre, with most of the lot occupied by building area. The subdivision would be more intense than those nearby. The platted lots adjacent west are approximately 0.57 acre. Carrying capacities and scenic resources in the area would generally not be respected due to the subject site's location internal to other, larger platted lots and due to the proximity of homes (due to smaller than required setbacks) in the subdivision. The VCSDP's General Regulations are intended to help ensure appropriate design for the area and that scenic resources are respected; however, it appears that the existing wall does not comply with General Standard II.C.1.c.
 - C. Policy II.B.5l-quality design/new development. The request would result in development of a new subdivision that would be subject to the VCSDP's General Regulations, which are intended to ensure appropriate quality and design for the area. As mentioned, it appears that the existing wall does not comply with General Standard II.C.1.c. The deviations would increase building area on each lot and, on lots about half the size of the smallest nearby lots, would result in development that is more dense than other development in this area of the VCSDP and, as stated by the applicant, will have all front-loaded garages which are considered the least desirable of the six allowed garage types.
7. The request partially furthers the following Goals of the VCSDP:
 - A. Goal 4: Staff reviewed platting and the 2014 aerial photo of the area in the City's GIS system. The request would result in housing that is more dense than the other, larger lot platted areas in the immediate vicinity, but similar to some of the housing developing on smaller lots a little further to the northwest.
 - B. Goal 6: As noted in the DRB file, the subject site is part of SAD 228, a special assessment district the purpose of which is to provide for public facilities and infrastructure in the Volcano Cliffs area. As such, the subdivision would be required to help provide infrastructure to the area. The agency comment from Hydrology Staff indicates that the subdivision has not adequately addressed first-flush requirements and a pond may be needed.
8. The VCSDP has different setback requirements for the "building to property line" setback distance and the "garage to property line" setback distance. But the garage to property line setbacks (5' side and 2' rear) only apply if the garage type is side- accessed or rear-loaded. Front loaded garages have a minimum 10' setback requirement from the main façade of a building. Building setbacks established by the underlying zone prevail.

OFFICIAL NOTICE OF DECISION

Project #1009178

September 10, 2015

Page 3 of 5

9. Though the setback requirements were the same in 2011 and 2014, the applicant states that the garages now have to be a different type than originally planned (no longer in the back) and therefore will take up more of the lot's buildable area unless the lots are made larger. However, no site layout details have been provided to demonstrate this.
10. The VCSDP deviation process offers relief of requirements if the applicant can demonstrate that the standard cannot be met without hardship due to the uniqueness of the site, and that applicable Goals and policies of the VCSDP can still be met. The deviation request is required to be justified.
11. The VCSDP specifies two criteria regarding a major deviation, 2A and 2B. In order for the EPC to grant the deviation(s) and approve the site development plan, the applicant must demonstrate each of the following:
 - A. The original standard(s) cannot be reasonably met without substantial hardship due to the uniqueness of the site, and
 - B. Applicable goals and policies of the VCSDP are still met, even with the proposed deviation (s).
12. Regarding criterion 2A: The EPC finds that subject site is not unique in terms of several factors, including but not limited to location, topography, physical or other characteristics, or condition. The land surrounding the subject site is indistinguishable from the subject site and is also vacant. Nor is the subject site unique in terms of size. A larger, vacant tract lies about 0.35 miles northwest and another tract, of similar size to the subject site, lies about 0.25 mile west. Furthermore, the subject site is near the center of a large area zoned SU-2/VCLL and, like all development in the VCSDP area, is subject to the same design requirements.

Because there is nothing unique about the subject site itself, even assuming without admitting there is a hardship, the hardship cannot be due to the uniqueness of the subject site but must be due to other factors. Test 2a requires that the hardship is specifically linked to the uniqueness of the site; a nexus between the two must exist. Because it does not, Test 2a is not met in this case.
13. Regarding criterion 2B: The EPC finds that few VCSDP Goals and policies apply. Many Goals and policies have to do with the Environment, Open Space, and Transportation and are not directly relevant. Goals 4 and 6 from the Land Use & Urban Design section apply. The request partially furthers Goal 4, regarding promoting diverse housing options, and partially furthers Goal 6 regarding providing orderly expansion of infrastructure. "Partially furthers" means that certain factors prevent the policy from being furthered in sum and, for all intents and in practice, is distinctly not the same as "Furthers".
14. The request does meet the criteria for deviation. There is nothing unique about the site in terms of physical characteristics or conditions or other factors (2a). Because both 2a AND 2b are required to be met, and the request does not meet 2a, denial of the deviations request is warranted. Furthermore, criterion 2b is not met either. Applicable VCSDP Goals, Goal 4 and Goal 6, are only partially furthered by the request. The test requires that applicable Goals and policies still be

OFFICIAL NOTICE OF DECISION

Project #1009178

September 10, 2015

Page 4 of 5

met, and partially furthers indicates that some outstanding factors contribute to the Goal or policy not being met in sum.

15. The neighborhood organizations required to be notified are the Volcano Cliffs Property Owners Association, the Petroglyph Estates Owners Association, and the Westside Coalition of Neighborhoods, which the applicant notified as required. Property owners within 100 feet of the subject site were also notified as required. Staff has not received inquiries or comments, and is not aware of any opposition as of this writing.

APPEAL: If you wish to appeal this decision, you must do so within 15 days of the EPC's decision or by **SEPTEMBER 25, 2015**. 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 14-16-4-4 of the Zoning Code. 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 EPC Recommendations to City Council; rather, a formal protest of the EPC's Recommendation can be filed within the 15 day period following the EPC's 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 City Zoning Code must be complied with, even after approval of the referenced application(s).

ZONE MAP AMENDMENTS: Pursuant to Zoning Code Section 14-16-4-1(C)(16), a change to the zone map does not become official until the Certification of Zoning (CZ) is sent to the applicant and any other person who requests it. Such certification shall be signed by the Planning Director after appeal possibilities have been concluded and after all requirements prerequisite to this certification are met. If such requirements are not met within six months after the date of final City approval, the approval is void. The Planning Director may extend this time limit up to an additional six months.

SITE DEVELOPMENT PLANS: Pursuant to Zoning Code Section 14-16-3-11(C)(1), if less than one-half of the approved square footage of a site development plan has been built or less than one-half of the site has been developed, the plan for the undeveloped areas shall terminate automatically seven years after adoption or major amendment of the plan: within six months prior to the seven-year deadline, the property owners shall request in writing through the Planning Director that the Planning Commission extend the plan's life an additional five years. Additional design details will be required as a project proceeds through the Development Review Board and through the plan check of Building Permit submittals for construction. Planning staff may consider minor, reasonable changes that are consistent with an approved Site Development Plan so long as they can be shown to be in conformance with the original, approved intent.

DEFERRAL FEES: Pursuant to Zoning Code Section 14-16-4-1(B), deferral at the request of the applicant is subject to a \$110.00 fee per case.

OFFICIAL NOTICE OF DECISION

Project #1009178

September 10, 2015

Page 5 of 5

Sincerely,



Suzanne Lubar
Planning Director

SL/CLL

cc: RTR, LLC, PO Box 27560, ABQ, NM 87104
Myers, McCready & Myers, P.C., Attn: Matt Myers, Esq., 1401 Central Ave. NW, ABQ, NM 87103
Dave Heil, Volcano Cliffs Property Owners Assoc., 160 Itasca Rd, Rio Rancho, NM 87124
Blake Thompson, Volcano Cliffs Property Owners Assoc., 3009 Palo Alto NE, ABQ, NM 87111
Steven J. Metro, Petroglyph Estates Owners Assoc. Inc., 8860 Desert Finch NE, ABQ, NM 87122
Gerald Worrall, Westside Coalition of NAs, 1039 Pinatubo Pl. NW, ABQ, NM 87120
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