



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

LISA ALLEN-URREA (CONSENSUS PLANNING, AGENT) requests a special exception to Section 14-16-2-23(A) and pg 71 UNIVERSITY NEIGHBORHOODS SDP : a VARIANCE request of 10 ft to the required 20 ft front setback to allow a proposed new townhome on a proposed new lot 1D for all or a portion of Lot 1&2, Block 10, University Heights zoned SU-2 DR, located on 202 CORNELL DR SE (K-16)

Special Exception No: ..... **15ZHE-80213**  
Project No:..... **Project# 1010565**  
Hearing Date:..... 09-15-15  
Closing of Public Record:..... 09-15-15  
Date of Decision: ..... 09-23-2015

On the 15th day of September, 2015 (hereinafter “**Hearing**”) CONSENSUS PLANNING, (hereinafter “**Agent**”) acting as agent on behalf of the property owner LISA ALLEN-URREA (hereinafter “**Applicant**”) appeared before the Zoning Hearing Examiner (hereinafter “**ZHE**”) requesting a Variance of 10 ft to the required 20 ft front setback to allow a proposed new townhome on a proposed new lot (hereinafter “**Application**”) upon the real property located at 202 CORNELL DR SE (“**Subject Property**”). Below are the findings of facts:

**FINDINGS:**

1. Applicant is requesting a Variance of 10 ft to the required 20 ft front setback to allow a proposed new townhome on a proposed new lot.
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 proposal is part of an infill development of eight units on four proposed lots targeted at addressing housing needs in the UNM area. Each lot is proposed to have a primary residence and a secondary casita or “flex” unit with a separate entrance. The

property is currently vacant and consists of two lots. Access and parking are proposed for the rear, with the fronts facing Silver Avenue.

4. Subdivision into four lots, construction of eight units, rear access, height and lot coverage all appear conforming under the Code. In addition to the front setback variances for each of the four lots Applicant requests floor area ratio variances for each lot and rear setback variances for two of the lots.
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.
6. The need for a front setback variance is driven by the designation of Silver Avenue as a bicycle corridor and Plan encouragement of pedestrian-oriented development on Silver.
7. Moving the structures forward on the lot assists in moving the parking to the rear of the lot, reducing curb cuts and vehicle entry onto Silver to avoid potential conflict with bicycle and pedestrian traffic as well as presenting a non-auto oriented streetscape that is consistent with surrounding development.
8. This adaptation supports numerous Plan goals, as cited by the Applicant, and is beneficial to the public interest, community and vicinity rather than being injurious.
9. To the extent that the requested variance allows the construction of quality housing in harmony with existing development that provides options to meet a clear demand for pedestrian oriented development, that also benefits the community in compliance with the applicable Plan goals.
10. The University Heights Association does not oppose the variance request.
11. The instant variance was previously approved on June 5, 2014, although that approval has expired.
12. One individual did speak regarding concern of a 2-story “monolithic” wall on Cornell.
13. A close examination of the plans shows appropriate massing, step backs, windows and entry covering that reasonably addresses that concern. The variance is also not necessarily related to the Cornell façade massing.
14. The approval should be conditioned on adhering to the current proposal to ensure that the concern is addressed.
15. 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 competing Plan goals and standards render compliance with both difficult for these vacant parcels that front on Silver Avenue when proposing appropriate and desired infill development. In addition the existence of access from both Cornell and from an Alley onto Silver is a special circumstance that both renders the subject property peculiarly appropriate for the requested variance and necessitates the variance.
16. 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 the unusual existence of a vacant .33 acre parcel situated for infill development but that must comply with the competing Plan policies (i.e., pedestrian oriented development and connectivity) and standards (the setbacks) at the same time constitutes an “*unjustified limitation on the reasonable use of the Subject Property*”

17. 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)]
18. 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 10 ft to the required 20 ft front setback to allow a proposed new townhome on a proposed new lot.

### **CONDITIONS OF APPROVAL:**

The project shall be built substantially as shown on the conceptual plans made a part of this record, as to the appearance of the Cornell façade.

If you wish to appeal this decision, you may do so 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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Zoning Hearing Examiner

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NOTIFICATION OF DECISION

LISA ALLEN-URREA (CONSENSUS PLANNING, AGENT) requests a special exception to Section 14-16-2-23(A) and pg 71 UNIVERSITY NEIGHBORHOODS SDP (6)(A)(1) : a VARIANCE request of .25 to the max .5 floor area ratio to allow a proposed new townhome on a proposed new lot 1D for all or a portion of Lot 1&2, Block 10, University Heights zoned SU-2 DR, located on 202 CORNELL DR SE (K-16)

Special Exception No: ..... **15ZHE-80229**  
Project No:..... **Project# 1010565**  
Hearing Date:..... 09-15-15  
Closing of Public Record:..... 09-15-15  
Date of Decision: ..... 09-23-2015

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**FINDINGS:**

1. Applicant is requesting a Variance of .25 to the max .5 floor area ratio to allow a proposed new townhome on a proposed new lot.
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 proposal is part of an infill development of eight units on four proposed lots targeted at addressing housing needs in the UNM area. Each lot is proposed to have a primary residence and a secondary casita or “flex” unit with a separate entrance. The

property is currently vacant and consists of two lots. Access and parking are proposed for the rear, with the fronts facing Silver Avenue.

4. Subdivision into four lots, construction of eight units, rear access, height and lot coverage all appear conforming under the Code. In addition to the front setback variances for each of the four lots Applicant requests floor area ratio variances for each lot and rear setback variances for two of the lots.
5. The ZHE finds that the Applicant has not 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.
6. Applicant's presentation makes a strong case for the suitability of the concurrently requested setback variances, based on applicable Plan provisions for bicycle and pedestrian access. Those characteristics do not support the requested FAR variance in the same way however.
7. The presumptive purpose of the FAR limits is to limit intensity of development,. It is easy to see how these limits are in the public interest and supportive of the community and nearby vicinity.
8. Applicant criticizes the FAR limitations as being "antiquated." That may well be true in the context of modern planning theory, particularly if other limits such as setbacks, lot coverage, heights, etc. apply. However, that is a general policy decision left to the wisdom of the governing body and not reasonably susceptible to second guessing by the ZHE in this context.
9. The ZHE cannot determine that the more limited Plan goals supporting additional FAR outweigh the intent of the FAR limits, particularly in light of the University Heights Association's explanation of the history and intention behind the .5 FAR limit as a middle ground between previously allowable higher intensity development and the lower intensity of the built environment at the time the FAR limit was adopted.
10. It would appear that the need for the FAR variances is driven at least in part by the proposed casitas.
11. Certainly the ZHE can see the attraction of the casita/flex units and can accept that there is a ready market for such units.
12. However, there is not adequate evidence in the record to quantify benefits and determine how those units' potential benefits outweigh any potential injury, as that injury is reasonably and adequately expressed by the University Heights Association (recognizing that the FAR variance is not directly tied to the casitas and that they are permitted by underlying zoning).
13. Moreover, although the ZHE can understand Applicant's position regarding the need to provide a product that the market will absorb and will provide a reasonable return, there is no evidence of that analysis in the record on which to rely.
14. The requested variance is also significant, amount to a full 50% increase in allowable floor area ratio.
15. The ZHE finds that the Applicant has not 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.

16. Again, although the Applicant makes compelling arguments for special circumstances associated with the subject property as related to setback variances, those arguments do not have obvious applicability to the FAR variance request.
17. The ZHE finds that the Applicant has not 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.
18. While there may be an unnecessary hardship related to the project’s economics, in the absence of substantial evidence in the record supporting that position it cannot be said that the choice to make the units a particular size, and/or include casitas, results from other than Applicant’s express choice.
19. The ZHE finds that the Applicant has met not 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)]
20. 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 failed to meet 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:**

**DENIAL** of a **VARIANCE** of .25 to the max .5 floor area ratio to allow a proposed new townhome on a proposed new lot.

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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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