



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

Randy Schmille requests a variance of 63 ft to the maximum 15 ft front yard setback for Lot 13-14, Block 15, Zuni Addn, located on 7212 Menaul Blvd NE, zoned MX-M [Section 14-16-5-1-D]

Special Exception No:.....**VA-2018-00017**  
Project No: .....**Project#2018-001232**  
Hearing Date: .....07-23-18  
Closing of Public Record: .....07-23-18  
Date of Decision: .....08-07-18

On the 23rd day of July, 2018, Randy Schmille, (“Applicant”) agent for Ed Karler, property owner appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 63 ft to the maximum 15 ft front yard setback (“Application”) upon the real property located at 7212 Menaul Blvd NE (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 63 ft to the maximum 15 ft front yard setback.
2. The City of Albuquerque Zoning Code of Ordinances Section 14-16-4-2 (C)(2) (Special Exceptions – Variance) reads: *“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 Applicant bears the burden of ensuring there is evidence in the record supporting a finding that the above criteria are met under Section 14-16-4-2(C).
4. The subject property is zoned MX-M.
5. All affected neighborhood associations and property owners were notified.
6. Randy Schmille testified in support of the Application.
7. No one appeared in opposition to the Application.
8. Specifically, the ZHE finds that the Application is for the building of a new facility that will be within the design parameters of the adjoining properties.
9. The old zoning was SU-3.
10. Pursuant to the IDO, the subject property is governed by the Uptown Sector Plan.
11. The new zoning for the subject property, MX-M, which is mixed use and retail.

12. The subject property is the most easterly property on the south side of Menaul Boulevard, and was always a buffer to the Uptown area.
13. All adjacent properties on Menaul have parking in front of the businesses.
14. The Application would allow the subject property to provide parking which would be in harmony with the existing businesses on Menaul.
15. The Application would allow the subject property to keep and retain the existing mature landscaping on both Menaul and Mesilla Blvd.
16. The ZHE finds that Application is not: (i) contrary to the public interest, (ii) injurious to the community; or (iii) injurious to the property or improvements located in the vicinity as required by Section 14-16-4-2 (C)(2)(a).
17. The ZHE finds that the original zoning of SU-3 was changed by the IDO.
18. The IDO changed the boundaries of the Uptown Sector Plan, making the property subject to that plan.
19. The subject property was formerly a buffer property.
20. The property had a dedicated alley, which has become a city utility easement.
21. The ZHE finds that 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, as required by Section 14-16-4-2(C)(2)(b).
22. The zone change from SU-3 to MX-M, and the imposition of the Upton Sector Plan was created by the City's change to IDO.
23. A hardship was created by this change when the subject property is subject to the street setbacks not exceeding 15 feet on both Menaul and Mesilla.
24. This new requirement was created by the IDO.
25. The ZHE finds that 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 district, as required by Section 14-16-4-2(C)(2)(c).
26. The ZHE finds that substantial justice will be done if this Application is approved, as required pursuant to Section 14-16-4-2 (C)(2)(d).
27. The ZHE finds that the proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-4-2(B)(4).
28. The ZHE finds that the Applicant has authority to pursue this Application.

#### CONCLUSIONS OF LAW:

The criteria within Section 14-16-4-2(C)(2) of the Albuquerque Zoning Code are satisfied.

#### DECISION:

APPROVAL of a variance of 63 ft to the maximum 15 ft front yard setback.

If you wish to appeal this decision, you must do so by August 23, 2018 in the manner described below. A non-refundable filing fee will be calculated at the Planning Department's Land Development Coordination counter and is required at the time the Appeal is filed.

Appeal is to be filed within 15 days of the decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, on the west side of the lobby.  
**Please present this letter of notification when filing an appeal.**

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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Stan Harada, Esq.  
Zoning Hearing Examiner

cc: Zoning Enforcement  
ZHE File