



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

Rachael Swards requests a variance of 20% to the required 60% of clear transparent windows on ground floor facade facing a street for Lot 12B1, El Rancho Grande 1, located at 8801 Gibson Blvd SW, zoned PD [Section 14-16-5-11(E)(2)(b)1]

Special Exception No:..... **VA-2019-00221**  
Project No: ..... **Project#2019-002042**  
Hearing Date: ..... 08-20-19  
Closing of Public Record: ..... 08-20-19  
Date of Decision: ..... 09-04-19

On the 20th day of August, 2019, property owner Rachael Swards (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 20% to the required 60% of clear transparent windows on ground floor facade facing a street (“Application”) upon the real property located at 8801 Gibson Blvd SW (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 20% to the required 60% of clear transparent windows on ground floor facade facing a street.
2. The City of Albuquerque Integrated Development Ordinance, Section 14-16-6-6(N)(3)(a) (Variance-Review and Decision Criteria) reads: “... an application for a Variance-ZHE shall be approved if it meets all of the following criteria:
  - (1) *There are special circumstances applicable to the subject property that are not self-imposed and that 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. Such special circumstances of the property either create an extraordinary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the property, or practical difficulties result from strict compliance with the minimum standards.*
  - (2) *The Variance will not be materially contrary to the public safety, health, or welfare.*
  - (3) *The Variance does not cause significant material adverse impacts on surrounding properties or infrastructure improvements in the vicinity.*
  - (4) *The Variance will not materially undermine the intent and purpose of the IDO or the applicable zone district.*
  - (5) *The Variance approved is the minimum necessary to avoid extraordinary hardship or practical difficulties.”*
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 14-16-6-4(N)(1).
4. Michelle Mullens @ Mullen Heller Architecture, agent for Southbay Investments LLC, property owner appeared and gave evidence in support of the application.

5. The request is for a variance from Section 14-16-5-11(E)(2)(b): *Development Standards; Building Design; Mixed Use and Non-Residential Zone Districts; Façade Design; Urban Centers, Activity Centers, and Main Street and Premium Transit Areas.*
6. The Standard requires: *“Each ground floor façade facing a public street shall contain a minimum of 60 percent of its surfaces in clear, transparent windows and/or doors, with the lower edge of the window sills no higher than 30 inches above the finished floor.”*
7. The address of the subject property is 8801 Gibson Blvd. SW.
8. The subject property is currently zoned PD.
9. The request is to allow a reduction of the façade requirement from a required 60 percent to 40 percent of the façade facing Barbados SW.
10. All property owners within 100 feet of the subject property and the affected neighborhood association were notified.
11. Southwest Alliance of Neighborhood Associations (SWAN); Westside Coalition of Neighborhood Associations and South Valley Coalition of Neighborhood Associations are the affected neighborhood associations.
12. The proposed project is construction of Solare Collegiate Foundation, a new charter school.
13. A school is a permissive use in the current zone district.
14. The subject property is 11 acres in size and is currently undeveloped and vacant.
15. The subject property is located at the corner of Gibson SW and Barbados SW., and the proposed first building will have facades facing Gibson and Barbados SW.
16. The subject property is within an Activity Center as defined by the IDO.
17. There is a physical boundary of the AMAFCA flood drainage area, divides the subject property area from adjacent residential zone districts.
18. The adjacent residential neighborhood zone developments all have 6 foot high solid concrete block walls separating their back yards from the public streets.
19. The proposed school is targeting an educationally underserved population residing in the Southwest Mesa area.
20. The Applicants have had several meetings with the affected neighborhood associations, which have all expressed support for the proposed school.
21. The subject property is not located in a dense urban setting, and the proposed use is not a public retail or office space.
22. The façade requirements for Activity Centers seems to be directed at commercial business activities within those centers.
23. The requirements appear to be restrictive for other permissive activities within those centers, especially a school.
24. The transparency requirements seemed to be promotive of encouraging potential patrons of commercial activities to see goods and services available.
25. Several practical difficulties would be encountered in complying with the transparency requirement.
26. In the modern design of schools, security of students and energy efficiency would be more important factors to be considered in context of the transparency required.
27. Because of the private nature of school operations, student counseling, parent conferences, health concerns and student records, student safety and security concerns are primary.
28. A 60 percent transparent glazing requirement is not appropriate or safe for educational uses.
29. The required amount of glazing goes counter to prevention of possible breaches in student security through the glazing.

30. The increased amount of energy consumption required for heating and cooling with additional glazing, especially on south or west facing glazing, makes it difficult to promote or encourage a “smaller carbon footprint” for the school.
31. Traffic sounds from the main nearby streets being transmitted more easily through glass, would potentially create more distractions in the student learning environment.
32. The variance would not cause adverse impact on surrounding properties, and in fact, would positively impact the health, safety and welfare to the public, but especially to the student population.
33. The subject project will spur other development on the south side of Gibson, which would help this Activity Center actually earn the designation.
34. No one appeared in opposition to the Application.
35. There are special circumstances applicable to the Subject Property that are not self-imposed and that 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 14-16-6-6(N)(3)(a)(1).
36. The variance will not be contrary to the public safety, health and welfare of the community as required by Section 14-16-6-6(N)(3)(a)(2).
37. The variance will not cause significant adverse material impacts on surrounding properties or infrastructure improvements in the vicinity as required by Section 14-16-6-6(N)(3)(a)(3).
38. The variance will not materially undermine the intent and purpose of the IDO or applicable zone district as required by Section 14-16-6-6(N)(3)(a)(4).
39. The variance approved is the minimum necessary to avoid extraordinary hardship or practical difficulties as required by Section 14-16-6-6(N)(3)(a)(5).
40. The proper “Notice of Hearing” signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
41. The Applicant has authority to pursue this Application.

DECISION:

APPROVAL of a variance of 20% to the required 60% of clear transparent windows on ground floor facade facing a street.

APPEAL:

If you wish to appeal this decision, you must do so by September 19, 2019 pursuant to Section 14-16-6-4(U), of the Integrated Development Ordinance, you must demonstrate that you have legal standing to file an appeal as defined.

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: ZHE File  
Zoning Enforcement  
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