Devan Patel requests a variance of 32 ft to the max 18 ft for the height of a 50 ft freestanding sign on the Lands of Nancy J. Els, located at 2601 Mulberry ST SE, zoned MX-L [Section 14-16-5-12(F)(2)]

Special Exception No:............. VA-2018-00219
Project No:........................ Project# 2018-001870
Hearing Date:.................... 01-15-19
Closing of Public Record:....... 01-15-19
Date of Decision:............... 01-30-19

On the 15th day of January, 2019, property owner Devan Patel (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 32 ft to the max 18 ft for the height of a 50 ft freestanding sign (“Application”) upon the real property located at 2601 Mulberry ST SE (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 32 ft to the max 18 ft for the height of a 50 ft freestanding sign.
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 14-16-6-6(N)(1).
4. Devan Patel, owner appeared and gave evidence in support of the application.
5. All property owners within 100 feet of the subject property and the affected neighborhood association were notified.
6. Kirtland Community Association is the affected neighborhood association.
7. An e-mail dated November 26, 2018, signed by Kimberly Brown, KCA President was submitted in support of the Application.
8. The subject property is currently zoned MX-L.
9. The subject property is in an Airport Protective Overlay Zone (APO) controlled by Section 14-16-3-3 (Airport Protection Overlay Zone).
10. Pursuant to Section 14-16-6-4(I)(3) the Application was sent for comment to Kirtland Air Force Base and City Aviation Department for comment.
11. An e-mail dated January 14, 2019 and signed by James Hinde, for the City Aviation Department stating “no comment” on the Application was submitted.
12. An e-mail dated January 14, 2019 and signed by Malak Hakin, Community Planner for Kirtland AFB, stating “no issues” on the Application was submitted.
13. A site plan was submitted in support of the Application.
14. A graphic elevation was submitted in support of the Application.
15. The Baymont Hotel is the business on the subject property.
16. The hotel is located on Mulberry Street.
17. The location is a significant distance from I-25 and Gibson Ave.
18. The Application would be more visible and enable guests to locate the hotel from both streets.
19. The Application is a free standing sign and would not adversely impact the neighborhood across Mulberry.
20. Transportation reported no objection to the application.
21. No one appeared in opposition to the application.
22. 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).
23. 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).
24. 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).
25. 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).
26. 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).
27. The proper “Notice of Hearing” signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
28. The Applicant has authority to pursue this Application.

DECISION:

APPROVAL of a variance of 32 ft to the max 18 ft for the height of a 50 ft freestanding sign.
CONDITIONS:

The design of the sign shall comply with any applicable design standards in Sections 14-16-5-12 SIGNS.

APPEAL

If you wish to appeal this decision, you must do so by February 14, 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: Zoning Enforcement
    ZHE File
    Devan Patel, 2601 Mulberry ST SE, 87106