



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

Berns LLC requests a variance of 1 mile to the required 1 mile distance from another pawn shop for Lot A, Fourth & Menaul LTD, located at 401 Menaul Blvd NW, zoned MX-M [Section 14-16-4-3(D)(40)]

Special Exception No:..... **VA-2021-00250**  
Project No: ..... **Project#2021-005678**  
Hearing Date: ..... 08-17-21  
Closing of Public Record: ..... 08-17-21  
Date of Decision: ..... 09-01-21

On the 17th day of August, 2021, property owner Berns LLC (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 1 mile to the required 1-mile distance from another pawn shop (“Application”) upon the real property located at 401 Menaul Blvd NW (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 1 mile to the required 1-mile distance from another pawnshop.
2. The City of Albuquerque Integrated Development Ordinance (IDO), Section 14-16-4-3(D)(40) states that a pawnshop use cannot be located within 1 mile of another pawnshop location. There is already an existing pawnshop on the Subject Property. Consequently, Applicant requested this variance.
3. IDO 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.”*

4. The applicant bears the burden of providing a sound justification for the requested decision, based on substantial evidence, pursuant to IDO Section 14-16-6-4(E)(3).
5. The applicant bears the burden of showing compliance with required standards through analysis, illustrations, or other exhibits as necessary, pursuant to IDO Section 14-16-6-4(E)(4).
6. Applicant appeared and gave evidence in support of the application.
7. All property owners within 100 feet of the subject property and the affected neighborhood association were notified.
8. The subject property is currently zoned MX-M.
9. The proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
10. The Applicant has authority to pursue this Application.
11. The City of Albuquerque Land Use Facilitation Program held a facilitated meeting regarding the Application, which was attended by Applicant, neighbors, and neighborhood association representatives.
12. The Near North Valley Neighborhood Association and the North Valley Coalition submitted written correspondence and oral testimony opposing the Application for numerous reasons.
13. Applicant has failed to establish the first prong of the variance test, Section 14-16-6-6(N)(3)(a)(1), which requires that there exist 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. Applicant submitted a letter of justification stating that "[n]othing physical will change on the property. The variance is to allow 2 pawn shops to operate on the same property (within 1 mile of each other)." This statement does not establish any special circumstance. Further, Applicant did not submit any testimony at the hearing or any other evidence that would establish how the Subject Property has special circumstances that are not self-imposed and that do not apply generally to other property in the same zone and vicinity. Neighborhood association representatives pointed out in written correspondence that no special circumstance exists. Therefore, there appears no special circumstance under Section 14-16-6-6(N)(3)(a)(1), which would 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.
14. Because all prongs of the variance test must be satisfied, and, as stated above, Applicant failed to satisfy Section 14-16-6-6(N)(3)(a)(1), the Application must be denied.

DECISION:

DENIAL of a variance of 1 mile to the required 1-mile distance from another pawnshop.

CONDITIONS:

APPEAL:

If you wish to appeal this decision, you must do so by September 16, 2021 pursuant to Section 14-16-6-4(V), 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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cc:

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