



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

Wymont, LLC (Agent, Consensus Planning) requests a variance of 14 ft to the required 20 ft edge buffer landscaping next to an R-MH zone for Lot 1-A-1, La Miranda Subd, located at 4315 Wyoming Blvd NE, zoned MX-M [Section 14-16-5-6(E)(3)(a)]

Special Exception No:..... **VA-2022-00034**
Project No: **Project#2019-002309**
Hearing Date: 03-15-22
Closing of Public Record: 03-15-22
Date of Decision: 03-30-22

On the 15th day of March, 2022, Consensus Planning, agent for property owner Wymont, LLC (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 14 ft to the required 20 ft edge buffer landscaping next to an R-MH zone (“Application”) upon the real property located at 4315 Wyoming Blvd NE (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 14 ft to the required 20 ft edge buffer landscaping next to an R-MH zone.
2. The City of Albuquerque Integrated Development Ordinance, Section 14-16-6-6(O)(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 providing a sound justification for the requested decision, based on substantial evidence, pursuant to IDO Section 14-16-6-4(E)(3).

4. 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).
5. Agent and Applicant appeared and gave evidence in support of the Application.
6. All property owners within 100 feet of the subject property and the affected neighborhood association were notified.
7. The subject property is currently zoned MX-M.
8. Based on evidence submitted by or on behalf of Applicant, it appears that 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). Specifically, Applicant testified and provided written evidence that, the Subject Property has special circumstances because of its location in relation to major thoroughfares, accessways and adjacent properties based on historic development, as well as the shape of the Subject Property, with an angled western boundary, which give rise to the need for this request. These special circumstances create an extraordinary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the Subject Property, because compliance with the minimum standards would not allow for the reasonably located and articulated proposed use that otherwise would be in compliance with the IDO.
9. Based on evidence submitted by or on behalf of Applicant, 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). Specifically, evidence was submitted supporting that, if granted approval, the Applicant intends to construct the wall in a manner that is consistent with the IDO and the Development Process Manual (DPM).
10. Based on evidence submitted by or on behalf of Applicant, 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). Specifically, the proposal is designed to facilitate a site design that orients the drive-through lanes away from the public right-of-way and entrance to the site from Montgomery Boulevard, thus minimizing traffic conflicts and impacts to the roadway network. The proposed development has been planned in coordination with the other commercial pad sites and townhouse subdivision by the Applicant as a cohesive redevelopment of the former La Mirada shopping center. As such, the use has been considered as part of an overall traffic study, grading and drainage plans, and water and sewer availability, and the variances do not impact those separate approvals that ensure adequate infrastructure is provided to all surrounding properties. Sufficient buffers already exist or will be provided in relation to any adjacent residential uses.
11. Based on evidence submitted by or on behalf of Applicant, 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). Specifically, Applicant presented evidence that the intent of IDO will still be met in that the subject site will be in harmony with the underlying zone district and the area, and the proposed variance would merely allow for reasonable useability of the site, while maintaining appropriate buffers.

12. Based on evidence submitted by or on behalf of Applicant, 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). Specifically, Applicant submitted evidence that any smaller variance would be ineffective to provide for the usability of the site. Thus, the applicant is not requesting more than what is minimally necessary for a variance.
13. City Transportation submitted a report stating no objection.
14. The proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
15. The Applicant has authority to pursue this Application.
16. Applicant stated that the Application is limited to Tract 1, as shown and designated on the Plat for Wymont Subdivision, recorded in the records of the Bernalillo County Clerk on February 1, 2022, as Document # 2022010933.

DECISION:

APPROVAL WITH CONDITION of a variance of 14 ft to the required 20 ft edge buffer landscaping next to an R-MH zone.

CONDITION:

This approval of the Application is limited to Tract 1, as shown and designated on the Plat for Wymont Subdivision, recorded in the records of the Bernalillo County Clerk on February 1, 2022, as Document # 2022010933.

APPEAL:

If you wish to appeal this decision, you must do so by April 14, 2022 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.



Robert Lucero, Esq.
Zoning Hearing Examiner

cc:

ZHE File

Zoning Enforcement

Consensus Planning, Vos@consensusplanning.com



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Wymont, LLC (Agent, Consensus Planning) requests a variance of 32 ft to the required 50 distance from an order board to a lot containing residential uses for Lot 1-A-1, La Miranda Subd, located at 4315 Wyoming Blvd NE, zoned MX-M [Section 14-16-5-5(I)(2)(f)]

Special Exception No:..... **VA-2022-00035**
Project No: **Project#2019-002309**
Hearing Date: 03-15-22
Closing of Public Record: 03-15-22
Date of Decision: 03-30-22

On the 15th day of March, 2022, Consensus Planning, agent for property owner Wymont, LLC (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 32 ft to the required 50 distance from an order board to a lot containing residential uses (“Application”) upon the real property located at 4315 Wyoming Blvd NE (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 32 ft to the required 50 distance from an order board to a lot containing residential uses.
2. The City of Albuquerque Integrated Development Ordinance, Section 14-16-6-6(O)(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 providing a sound justification for the requested decision, based on substantial evidence, pursuant to IDO Section 14-16-6-4(E)(3).

4. 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).
5. Agent and Applicant appeared and gave evidence in support of the Application.
6. All property owners within 100 feet of the subject property and the affected neighborhood association were notified.
7. The subject property is currently zoned MX-M.
8. Based on evidence submitted by or on behalf of Applicant, it appears that 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). Specifically, Applicant testified and provided written evidence that, the Subject Property has special circumstances because of its location in relation to major thoroughfares, accessways and adjacent properties based on historic development, as well as the shape of the Subject Property, with an angled western boundary, which give rise to the need for this request. These special circumstances create an extraordinary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the Subject Property, because compliance with the minimum standards would not allow for the reasonably located and articulated proposed use that otherwise would be in compliance with the IDO.
9. Based on evidence submitted by or on behalf of Applicant, 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). Specifically, evidence was submitted supporting that, if granted approval, the Applicant intends to construct the wall in a manner that is consistent with the IDO and the Development Process Manual (DPM).
10. Based on evidence submitted by or on behalf of Applicant, 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). Specifically, the proposal is designed to facilitate a site design that orients the drive-through lanes away from the public right-of-way and entrance to the site from Montgomery Boulevard, thus minimizing traffic conflicts and impacts to the roadway network. The proposed development has been planned in coordination with the other commercial pad sites and townhouse subdivision by the Applicant as a cohesive redevelopment of the former La Mirada shopping center. As such, the use has been considered as part of an overall traffic study, grading and drainage plans, and water and sewer availability, and the variances do not impact those separate approvals that ensure adequate infrastructure is provided to all surrounding properties. Sufficient buffers already exist or will be provided in relation to any adjacent residential uses.
11. Based on evidence submitted by or on behalf of Applicant, 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). Specifically, Applicant presented evidence that the intent of IDO will still be met in that the subject site will be in harmony with the underlying zone district and the area, and the proposed variance would merely allow for reasonable useability of the site, while maintaining appropriate buffers.

12. Based on evidence submitted by or on behalf of Applicant, 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). Specifically, Applicant submitted evidence that any smaller variance would be ineffective to provide for the usability of the site. Thus, the applicant is not requesting more than what is minimally necessary for a variance.
13. City Transportation submitted a report stating no objection.
14. The proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
15. The Applicant has authority to pursue this Application.
16. Applicant stated that the Application is limited to Tract 1, as shown and designated on the Plat for Wymont Subdivision, recorded in the records of the Bernalillo County Clerk on February 1, 2022, as Document # 2022010933.

DECISION:

APPROVAL of a variance of 32 ft to the required 50 distance from an order board to a lot containing residential uses.

CONDITION:

This approval of the Application is limited to Tract 1, as shown and designated on the Plat for Wymont Subdivision, recorded in the records of the Bernalillo County Clerk on February 1, 2022, as Document # 2022010933.

APPEAL:

If you wish to appeal this decision, you must do so by April 14, 2022 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.

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