



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

A & F Partners, LLC (Agent, Fritz Eberle) requests a variance of 8 ft to the required 30 ft building height within 100 ft of a regulated lot for Lot 17B, MRGCD Map 35, located at 2211 Rio Grande BLVD NW, zoned R-MH [Section 14-16-5-9(C)(1)]

Special Exception No: **VA-2022-00301**
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Project No: **Project#2022-007722**
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Hearing Date: 11-15-22
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Closing of Public Record: 11-15-22
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Date of Decision: 11-30-22
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On the 15th day of November, 2022, Fritz Eberle, agent for property owner A & F Partners, LLC (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 8 ft to the required 30 ft building height within 100 ft of a regulated lot (“Application”) upon the real property located at 2211 Rio Grande BLVD NW (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 8 ft to the required 30 ft building height within 100 ft of a regulated lot.
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 this IDO, the applicable zone district, or any applicable Overlay Zone.*
 - (5) *The Variance approved is the minimum necessary to avoid extraordinary hardship or practical difficulties.*”

3. 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. 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 appeared at the ZHE hearing on this matter and gave evidence in support of the Application.
6. Applicant established that the proper "Notice of Hearing" signage was posted for the required time period. Although there were some complaints about the location of the signage, photographs and testimony submitted by Applicant established that the signage was posted in accordance with IDO requirements.
7. Applicant established that all property owners and neighborhood association entitled to notice were notified of the Application.
8. Applicant has authority to pursue this Application.
9. The City Traffic Engineer submitted a report stating no objection to the Application.
10. The subject property is currently zoned R-MH.
11. 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(O)(3)(a)(1). Specifically, Applicant confirmed in oral testimony and submitted evidence that, the Subject Property's unique larger size and prior development pattern based on historic platting and development under prior code and regulatory regimes, as well as the location of existing public and private improvements, create special circumstances. 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 proposed use, which otherwise would be in compliance with the IDO.
12. However, it is unclear to the ZHE whether substantial evidence submitted by or on behalf of Applicant currently establishes that the variance requested would be the minimum necessary to avoid extraordinary hardship or practical difficulties as required by Section 14-16-6-6(O)(3)(a)(5). Specifically, when the ZHE asked about the number of dwelling units that would result if compliance were strictly adhered-to or the variance were not granted Agent stated that they had not performed those calculations. The Applicant should be granted the opportunity to supplement the record in this regard.
13. Also, there was much discussion by Applicant, opponents, and persons providing other public testimony, regarding potential safety problems that may be caused by the existence of future screening walls and vegetation that may impede views of traffic. All parties should be allowed to submit additional evidence on this matter. Applicant is encouraged to confer with representatives of Los Duranes Neighborhood Association, a representative of which testified that the neighborhood association would not oppose the Application if the question of the location of screening were addressed to show that no view problems would result.
14. This matter should be deferred to allow for additional evidence and justification to be submitted, as discussed, above.

DECISION:

CONTINUANCE of the Application to the December 20, 2022 ZHE hearing, beginning at 9:00 a.m.

APPEAL:

If you wish to appeal this decision, you must do so by December 15, 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:

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

A & F Partners, LLC (Agent, Fritz Eberle) requests a variance of 6 ft to the required 6 ft step-back from the street façade for Lot 17B, MRGCD Map 35, located at 2211 Rio Grande BLVD NW, zoned R-MH [Section 14-16-3-4(L)(4)]

Special Exception No: **VA-2022-00302**
.....
Project No: **Project#2022-007722**
.....
Hearing Date: 11-15-22
.....
Closing of Public Record: 11-15-22
.....
Date of Decision: 11-30-22
.....

On the 15th day of November, 2022, Fritz Eberle, agent for property owner A & F Partners, LLC (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 6 ft to the required 6 ft step-back from the street façade (“Application”) upon the real property located at 2211 Rio Grande BLVD NW (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 6 ft to the required 6 ft step-back from the street façade.
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 this IDO, the applicable zone district, or any applicable Overlay Zone.*
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3. 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).
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8. Applicant has authority to pursue this Application.
9. The City Traffic Engineer submitted a report stating no objection to the Application.
10. The subject property is currently zoned R-MH.
11. 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(O)(3)(a)(1). Specifically, Applicant confirmed in oral testimony and submitted evidence that, the Subject Property's unique larger size and prior development pattern based on historic platting and development under prior code and regulatory regimes, as well as the location of existing public and private improvements, create special circumstances. 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 proposed use, which otherwise would be in compliance with the IDO.
12. However, it is unclear to the ZHE whether substantial evidence submitted by or on behalf of Applicant currently establishes that the variance requested would be the minimum necessary to avoid extraordinary hardship or practical difficulties as required by Section 14-16-6-6(O)(3)(a)(5). Specifically, when the ZHE asked about the number of dwelling units that would result if compliance were strictly adhered-to or the variance were not granted Agent stated that they had not performed those calculations. The Applicant should be granted the opportunity to supplement the record in this regard.
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