



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**  
Project No: ..... **Project#2022-007722**  
Hearing Date: ..... 1-17-23  
Closing of Public Record: ..... 1-17-23  
Date of Decision: ..... 02-01-23

On the 17th day of January, 2023, 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. 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).
3. 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).
4. The Application was originally heard at the November 15, 2022 ZHE hearing, which led to a Notification of Decision (NOD) continuing the Application to the December 20, 2022 ZHE hearing, to allow for additional evidence and justification to be submitted.
5. At the December 20, 2022 ZHE hearing, complainants alleged, and Agent confirmed in sworn testimony, that the required posted sign notice was removed during a portion of the required time period, in nonconformance with IDO Section 14-16-6-4(K). This resulted in an NOD continuing the Application to the January 17, 2023 ZHE hearing, to allow Applicant to post sign notice in accordance with IDO requirements.
6. Agent appeared at the January 17, 2023 ZHE hearing on this matter and gave evidence in support of the Application.
7. It appears again from evidence in the record that the proper "Notice of Hearing" signage was not posted for the required time period.
8. Specifically, IDO Section 14-16-6-4(K)(4) requires that where IDO Table 6-1-1 requires posted sign notice, as is the case here, “*the applicant shall post at least 1 sign on each street abutting the property that is the subject of the application, at a point clearly visible from that street, for at least 15 calendar days before the public meeting or hearing, as applicable, and for the appeal period of 15 calendar days following any decision, required pursuant to Subsection 14-16-6-4(V)(3)(a)1.*” (emphasis added)

9. Further, IDO Section 6-4(K)(1)(a) requires that “[a]ll notice required by Table 6-1-1 shall include, at a minimum, all of the following information:
  1. The address of the property listed in the application.
  2. The name of the property owner.
  3. The name of the applicant (if different from the property owner).
  4. A short summary of the approval being requested (e.g. Conditional Use Approval to allow a particular use, Zoning Map Amendment from an existing zone district to a specified district, a Site Plan – DRB for a particular project, etc.).
  5. **Whether a public meeting or hearing will be required, and if so the date, time, and place of the public meeting or hearing.**
  6. An address, telephone number, or website where additional information about the application can be obtained.”(Emphasis added).
10. Complainants allege, and Agent confirmed in sworn testimony, that the required posted sign was removed during a portion of the required time period. Specifically, the sign containing the notice of the January 17, 2023 ZHE hearing in this matter was not put-up until January 4, 2023, which was 13 days before the hearing.
11. While Applicant may argue that the posting of the sign for the initial November 2022 ZHE hearing in this matter satisfied the notice requirement, IDO Section 6-4(K)(1)(a) makes clear that the notice must contain, among other required items, “[w]hether a public meeting or hearing will be required, and if so the date, time, and place of the public meeting or hearing.” The notice for the November 2022 ZHE hearing did not contain this required information as to the January 2023 ZHE hearing in this matter, as it would have been impossible for it to do so.
12. To be clear, Applicant must post the notice sign in conformance with all IDO requirements, including without limitation to include the date, time, and place of February 21, 2023 ZHE Hearing, and that this notice must be posted at least 15 days before said hearing.
13. While the ZHE can sympathize that Applicant may be frustrated with the need to post notice again and attend another hearing after another month in the process, the ZHE points out that, under New Mexico case law, failure to provide required notice can be a jurisdictional defect that would invalidate any action by the zoning authority. *See Nesbit. City of Albuquerque, 1977-NMSC-107.*
14. This matter should be continued to allow Applicant to post sign notice in accordance with IDO requirements.

#### DECISION:

CONTINUANCE of the Application to the February 21, 2023 ZHE hearing, beginning at 9:00 a.m.

#### APPEAL:

If you wish to appeal this decision, you must do so by February 16, 2023 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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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: ..... 1-17-23  
Closing of Public Record: ..... 1-17-23  
Date of Decision: ..... 02-01-23

On the 17th day of January, 2023, 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. 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).
3. 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).
4. The Application was originally heard at the November 15, 2022 ZHE hearing, which led to a Notification of Decision (NOD) continuing the Application to the December 20, 2022 ZHE hearing, to allow for additional evidence and justification to be submitted.
5. At the December 20, 2022 ZHE hearing, complainants alleged, and Agent confirmed in sworn testimony, that the required posted sign notice was removed during a portion of the required time period, in nonconformance with IDO Section 14-16-6-4(K). This resulted in an NOD continuing the Application to the January 17, 2023 ZHE hearing, to allow Applicant to post sign notice in accordance with IDO requirements.
6. Agent appeared at the January 17, 2023 ZHE hearing on this matter and gave evidence in support of the Application.
7. It appears again from evidence in the record that the proper "Notice of Hearing" signage was not posted for the required time period.
8. Specifically, IDO Section 14-16-6-4(K)(4) requires that where IDO Table 6-1-1 requires posted sign notice, as is the case here, *“the applicant shall post at least 1 sign on each street abutting the property that is the subject of the application, at a point clearly visible from that street, for at least 15 calendar days before the public meeting or hearing, as applicable, and for the appeal period of 15 calendar days following any decision, required pursuant to Subsection 14-16-6-4(V)(3)(a)1.”* (emphasis added)

9. Further, IDO Section 6-4(K)(1)(a) requires that “[a]ll notice required by Table 6-1-1 shall include, at a minimum, all of the following information:
1. *The address of the property listed in the application.*
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  5. ***Whether a public meeting or hearing will be required, and if so the date, time, and place of the public meeting or hearing.***
  6. *An address, telephone number, or website where additional information about the application can be obtained.”*

(Emphasis added).

10. Complainants allege, and Agent confirmed in sworn testimony, that the required posted sign was removed during a portion of the required time period. Specifically, the sign containing the notice of the January 17, 2023 ZHE hearing in this matter was not put-up until January 4, 2023, which was 13 days before the hearing.
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14. This matter should be continued to allow Applicant to post sign notice in accordance with IDO requirements.

#### DECISION:

CONTINUANCE of the Application to the February 21, 2023 ZHE hearing, beginning at 9:00 a.m.

#### APPEAL:

If you wish to appeal this decision, you must do so by February 16, 2023 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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