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

Davis Alfrazier Jr. (Agent, Yolanda Montoya) requests a variance of 15.27 to the required 45 ft landscape buffer adjacent to a major public Open Space for Lot 27, Block 8, Volcano Cliffs Unit 5, located at 6204 Marigold CT NW, zoned R-1D [Section 14-16-5-2(J)(2)(a)]

Special Exception No:	**VA-2023-00292**
Project No:	**Project#2023-009342**
Hearing Date:	11-21-23
Closing of Public Record:	11-21-23
Date of Decision:	12-06-23

On the 21st day of November, 2023, Yolanda Montoya, agent for property owner Davis Alfrazier Jr. ("Applicant") appeared before the Zoning Hearing Examiner ("ZHE") requesting a variance of 15.27 to the required 45 ft landscape buffer adjacent to a major public Open Space ("Application") upon the real property located at 6204 Marigold CT NW ("Subject Property"). Below are the ZHE's finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 16 ft to the required 45 ft landscape buffer adjacent to a major public Open Space.
2. Although the Application was noticed as requesting a variance of 15.27 feet, Applicant testified that the request was actually for 16feet. The ZHE finds that the notice provided was sufficient in description to put the world and all required parties on notice of the variance requested.
3. 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."

4. 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. 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. Agent appeared at the ZHE hearing on this matter and gave evidence in support of the Application.
7. Applicant established that the proper "Notice of Hearing" signage was posted for the required time period.
8. Applicant established that all property owners and neighborhood association entitled to notice were notified of the Application.
9. Applicant established that proper notice was provided pursuant to IDO requirements.
10. Applicant has authority to pursue this Application.
11. The subject property is currently zoned R-1D.
12. 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 layout based on historic platting and development under prior approval regimes, as well as the location of existing public and private improvements on site and on neighboring properties, 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 request, which otherwise would comply the IDO.
13. 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(O)(3)(a)(2). Specifically, evidence was submitted supporting that, if granted approval, the Applicant intends to construct the proposed project in a manner that is consistent with the IDO and the Development Process Manual (DPM). Although opponents raised objections that the requested variance would negatively impact views from major public open space, namely, the Petroglyphs National Monument, Applicant testified that the requested setback would be in line with improvements on lots in the vicinity that also border major public open space. Further, Applicant testified that the location of the Subject Property and the proposed variance are several hundred feet along the mesa top from the bluff, where views would be most impacted.
14. The City Traffic Engineer submitted a report stating no objection to the Application.
15. 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(O)(3)(a)(3). Specifically, the proposal is designed to be in harmony and consistency with prior approvals, what currently exists in the neighborhood, rights of way and infrastructure.
16. 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(O)(3)(a)(4). Specifically, Applicant confirmed in written submittals that the intent

of IDO will still be met in that the subject site will be in harmony with existing uses and the proposed variance would merely add to the useability of the site in line with prior development in the area.

17. The proposed variance is the minimum necessary to avoid extraordinary hardship or practical difficulties as required by Section 14-16-6-6(O)(3)(a)(5). Evidence supports that, any smaller variance would not be practicable.
18. The requirements of IDO Section 14-16-6-6(O)(3)(a) are satisfied.

DECISION:

APPROVAL of a variance of 16 feet to the required 45 ft landscape buffer adjacent to a major public Open Space.

APPEAL:

If you wish to appeal this decision, you must do so by December 21, 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.

Robert Lucero, Esq.
Zoning Hearing Examiner

cc:

ZHE File
Zoning Enforcement
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