



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: 02-21-23
Closing of Public Record: 02-21-23
Date of Decision: 02-22-23

On the 21st day of February, 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. The Subject Property is currently zoned R-MH.
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. Agent established that the proper "Notice of Hearing" signage was posted for the required time period. Although there were some complaints about the location and timing of placement of notice signage, photographs and testimony submitted by Applicant established that the signage was posted in accordance with IDO requirements.
8. Applicant established that all property owners and neighborhood association entitled to notice were notified of the Application.
9. Applicant has authority to pursue this Application.
10. The City Traffic Engineer submitted a report stating no objection to the Application.
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. In particular, the Subject Property is essentially the only property in the relevant area of inquiry with R-MH zoning, which was instituted with the City's adoption of the IDO. 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. 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 initially certain community members raised concerns regarding traffic safety, Applicant has amended its plans to address those concerns, including without limitation by moving the location of access and removing obstructions to view of oncoming traffic. These changes appear to have satisfied the concerns of the Los Duranes Neighborhood Association regarding traffic. Again, the City Traffic Engineer has submitted a report stating no objection to the Application. Also, the Rio Grande Neighborhood Association submitted a letter stating that it would not oppose the Application, provided that the Subject Property would not exceed three stories in height. This letter highlights the unique zoning of the Subject Property in relation to neighboring lots, and states that the proposed variance to develop the Subject Property as a three-story development would cause less impact than if the property were developed in four stories, as would be allowed without the requested variance.
13. 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

reasonably designed to be consistent with what currently exists in the neighborhood (given the property's relatively unique zoning as compared to neighboring lands), including existing public infrastructure. While certain neighbors complained of the height of the proposed building, Applicant could by right construct a higher structure without a variance and has compromised with the community to minimize obstruction of views and impacts on surrounding properties. Therefore, the requested variance does not cause significant adverse impacts, as the impacts of development without the variance would cause a greater impact. Applicant has demonstrated that the proposed development would not significantly adversely impact infrastructure improvements or traffic, as discussed above.

14. 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 safety and useability of the site. Applicant is proposing a permissive use in the R-MH zone, the development of which requires the requested variances to bring the property into greater harmony with its surroundings and appropriately address the special circumstances of the Subject Property.
15. Based on evidence submitted by or on behalf of Applicant, it appears that 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). Agent and Applicant submitted evidence regarding the many compromises made to accommodate community concerns and the impact such compromises have on the development of the Subject Property, as well as how the Subject Property may be developed if no variance were granted. Based on this evidence, any lesser variance would be impracticable and the requested variance is therefore the minimum necessary to avoid extraordinary hardship or practical difficulties.

DECISION:

APPROVAL WITH CONDITION of a variance of 8 ft to the required 30 ft building height within 100 ft of a regulated lot.

CONDITION:

Development on the Subject Property may not exceed three stories in height.

APPEAL:

If you wish to appeal this decision, you must do so by March 9, 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:

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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: 02-21-23
	Closing of Public Record: 02-21-23
	Date of Decision: 02-22-23

On the 21st day of February, 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. The Subject Property is currently zoned R-MH.
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:*
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 - (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).
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8. Applicant established that all property owners and neighborhood association entitled to notice were notified of the Application.
9. Applicant has authority to pursue this Application.
10. The City Traffic Engineer submitted a report stating no objection to the Application.
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. In particular, the Subject Property is essentially the only property in the relevant area of inquiry with R-MH zoning, which was instituted with the City's adoption of the IDO. 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. 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 initially certain community members raised concerns regarding traffic safety, Applicant has amended its plans to address those concerns, including without limitation by moving the location of access and removing obstructions to view of oncoming traffic. These changes appear to have satisfied the concerns of the Los Duranes Neighborhood Association regarding traffic. Again, the City Traffic Engineer has submitted a report stating no objection to the Application. Also, the Rio Grande Neighborhood Association submitted a letter stating that it would not oppose the Application, provided that the Subject Property would not exceed three stories in height. This letter highlights the unique zoning of the Subject Property in relation to neighboring lots, and states that the proposed variance to develop the Subject Property as a three-story development would

- cause less impact than if the property were developed in four stories, as would be allowed without the requested variance.
13. 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 reasonably designed to be consistent with what currently exists in the neighborhood (given the property's relatively unique zoning as compared to neighboring lands), including existing public infrastructure. While certain neighbors complained of the height of the proposed building, Applicant could by right construct a higher structure without a variance and has compromised with the community to minimize obstruction of views and impacts on surrounding properties. Therefore, the requested variance does not cause significant adverse impacts, as the impacts of development without the variance would cause a greater impact. Applicant has demonstrated that the proposed development would not significantly adversely impact infrastructure improvements or traffic, as discussed above.
 14. 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 safety and useability of the site. Applicant is proposing a permissive use in the R-MH zone, the development of which requires the requested variances to bring the property into greater harmony with its surroundings and appropriately address the special circumstances of the Subject Property.
 15. Based on evidence submitted by or on behalf of Applicant, it appears that 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). Agent and Applicant submitted evidence regarding the many compromises made to accommodate community concerns and the impact such compromises have on the development of the Subject Property, as well as how the Subject Property may be developed if no variance were granted. Based on this evidence, any lesser variance would be impracticable and the requested variance is therefore the minimum necessary to avoid extraordinary hardship or practical difficulties.

DECISION:

APPROVAL WITH CONDITION of a variance of 6 ft to the required 6 ft step-back from the street façade.

CONDITIONS:

Development on the Subject Property may not exceed three stories in height.

APPEAL:

If you wish to appeal this decision, you must do so by March 9, 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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