



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

Red Shamrock 12, LLC (Agent, Modulus Architects) request a variance of 111.6 sq ft to exceed the allowed area of 75 sq ft for a freestanding on-premises sign in CPO-2 for Lots 1-10, University of ABQ Urban Center, located at 3801 Coors BLVD NW, zoned NR-C [Section 14-16-5-12(F)(2)]

Special Exception No: **VA-2023-00052**
Project No: **Project#2021-005597**
Hearing Date: 03-21-23
Closing of Public Record: 03-21-23
Date of Decision: 04-05-23

On the 21st day of March, 2023, Modulus Architects, agent for property owner Red Shamrock 12, LLC (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 111.6 sq ft to exceed the allowed area of 75 sq ft for a freestanding on-premises sign in CPO-2 (“Application”) upon the real property located at 3801 Coors BLVD NW (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 111.6 sq ft to exceed the allowed area of 75 sq ft for a freestanding on-premises sign in CPO-2.
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.
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 NR-C.
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). The Subject Property comprises approximately 26.4776 acres, which greatly exceeds the size of all lots in the vicinity. The size of this lot greatly exceeds the 100 ft min of street frontage and one (1) free standing sign along Coors Blvd. is a substantial limitation. The site also contains three (3) street frontages and no other commercial premise to the north, east, south or west sides of the lot have three (3) street frontages. As a result of the exceptional size of the property, the regulations produce an unnecessary hardship in that it limits the owner's reasonable use of the property and deprives the owner of a reasonable return on the property. This variance request would result in only three freestanding signs on this large lot, even after replatting -- many fewer than could be constructed if Applicant were to subdivide the Subject Property and place a sign on each subdivided lot. The retail tenants, which will advertise on the proposed sign, will be at a significant disadvantage in relation to other retail business in the area, because of this limitation of the number of signs. The proposed 186.6 square foot sign would advertise multiple tenants. Adhering to the strict application of the IDO would create an extraordinary hardship resulting from the limitation on the number of signs and sign area.
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 opponents raised concerns regarding traffic and congestion, the City traffic engineer's report stated no objection to the Application, and Applicant submitted a traffic study indicating that the intersection in question is and would become no more congested or dangerous than other similarly sized intersections in the City.
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 designed to be in harmony and consistency with what currently exists in the neighborhood and is planned for the development of the Subject Property, including rights of way and infrastructure.

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.
15. 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(O)(3)(a)(5). Specifically, Applicant submitted evidence that any smaller variance would be ineffective to provide for the useability of the site. Thus, the applicant is not requesting more than what is minimally necessary for a variance.
16. Applicant and several community members participated in a facilitated meeting regarding the application, at which the following mitigating measures were proposed and initially agreed-upon by participants:
 - a. Smaller sign face area of 125sf.
 - b. Sign not being located on the hard corner and not within any clear site triangles.
 - c. Nice architectural quality.
 - d. Landscaping around sign with benches integrated with bus stop.
17. The facilitated meeting report states that participants then reneged on these previously agreed-upon measures.
18. Nevertheless, certain of these measures would mitigate the potential for adverse impacts of the proposed variance, especially with respect to traffic safety and community character.
19. The requirements of IDO Section 14-16-6-6(O)(3)(a) are satisfied.

DECISION:

APPROVALWITH CONDITIONS of a variance of 111.6 sq ft to exceed the allowed area of 75 sq ft for a freestanding on-premises sign in CPO-2.

CONDITIONS:

- A. Freestanding signs on the Subject Property are limited to the three areas indicated on the site plan submitted in conjunction with the Application, namely:
 1. one sign on St. Josephs Drive NW located slightly east of the halfway point between Atrisco Drive NW and Coors Boulevard NW;
 2. one sign near the corner of St. Josephs Drive NW and Coors Boulevard NW; and
 3. one sign along Coors Boulevard NW nearer to the southern boundary of the Subject Property.
- B. The three signs described in Condition A, above, will be the only freestanding signs permitted on the Subject Property, even after replatting. Any plat of the Subject Property must contain a note reflecting this condition.
- C. Each sign is limited to a sign face area of 125sf.

D. No sign may be located within any clear site triangle.

APPEAL:

If you wish to appeal this decision, you must do so by April 20, 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

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FINDINGS:

1. Applicant is requesting a variance of 1 freestanding sign to 1 freestanding sign allowed per street frontage (Coors Blvd) in CPO-2.
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