



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

Paul van Gulick & Rebecca L. Blaine, Trust van Gulick/Blaine requests a permit to protect solar rights for 1031 Monte Largo DR NE along the southern dwelling façade from 1027 Monte Largo DR NE for Lot 16, Block 6, Ciudad Vista, located at 1031 Monte Largo Drive NE, zoned R-1C [Section 14-16-5-10(D)]

Special Exception No: **VA-2023-00202**
Project No: **Project#2023-009034**
Hearing Date: 09-19-23
Closing of Public Record: 09-19-23
Date of Amended Decision: 12-08-23

On the 19th day of September, 2023, property owners Paul van Gulick & Rebecca L. Blaine, Trust van Gulick/Blaine (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a permit to protect solar rights for 1031 Monte Largo DR NE along the southern dwelling façade from 1027 Monte Largo DR NE (“Application”) upon the real property located at 1031 Monte Largo Drive NE (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a permit to protect solar rights for 1031 Monte Largo DR NE along the southern dwelling façade from 1027 Monte Largo DR NE.
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. All property owners within 100 feet and affected neighborhood association(s) were notified.
5. The ZHE finds that the proper “Notice of Hearing” signage was posted for the required time period as required by Section 14-16-6-4(K)(4).
6. The ZHE finds that the Applicant has authority to pursue this Application.
7. The City Traffic Engineer submitted a report stating no objection to the Application.
8. City Ordinance Section 14-11-7(C) requires that the criteria for deciding requests for solar rights permits are as follows:
 - (1) *A permit for solar rights shall be approved if and only if, in the circumstances of the particular case, the solar collector and related solar rights created will be beneficially used, and in addition the solar rights granted:*
 - (a) *Will not unreasonably interfere with the enjoyment of other sites, either the enjoyment of present use or prospective use as indicated by zoning or adopted plans; or*
 - (b) *Will be of more value to the public welfare than the precluded enjoyment of present use or prospective use of other sites which would be precluded by the permit. For the purpose of this division (b), PUBLIC WELFARE*

means the conservation of scarce fuels and the allowance of an undertaking which would not otherwise be viable.

- (2) *The beneficial use of a solar right which would permit radiation from the sun to impinge directly on the solar collector before 9:00 a.m. or after 3:00 p.m., Mountain Standard Time, on a winter solstice day or before 9:00 a.m. or after 5:00 p.m., Mountain Daylight Savings Time, on a summer solstice day is de minimus and shall never be protected by a permit for solar rights. This division (2) shall not be construed to mean that an applicant has a right to a permit for solar rights at any other time of day.*
9. In addressing City Ordinance Section 14-11-7(C)(1), Applicant submitted evidence that the solar panels at the Subject Property would be beneficially used. Distribution is from DC to AC converters at the solar panels, thence to a set of PNM net meters, and thence to the home electrical system at the electrical panel
10. Regarding City Ordinance Section 14-11-7(C)(1)(a), Applicant states that the Solar Rights Permit requested would limit the height of any new construction or improvements including rooftop appurtenances in proximity to the north property line of the adjoining property to not exceed 3 feet above the height of the existing parapet on the north wall of the existing home. Limiting the height to not more than 3 feet above the existing parapet places no practical burden on the adjoining property. Placement of any future equipment of standard size on the adjoiner's flat roof, like an air conditioning or swamp cooling unit, would not exceed this limit. Also, the current IDO permits casitas, but not to exceed the height of the existing house. This is therefore in accordance with Article 11 §14-11-7 (C) (3) that *"There is a rebuttable presumption that solar rights which do not limit the height of potential buildings more than the normally permissive height regulations of the IDO will not unreasonably interfere with the enjoyment of the other sites."* No evidence to rebut this presumption was presented. Consequently, the ZHE finds that the solar rights granted Will not unreasonably interfere with the enjoyment of other sites, either the enjoyment of present use or prospective use as indicated by zoning or adopted plans.
11. In satisfaction of City Ordinance Section 14-11-7(C)(2), Applicant provided site plans, aerial layouts, calculations and analysis establishing the scope of the solar rights sought to be protected in conformance with the ordinance.
12. This Amended Notification of Decision is issued to comport with the recordation requirements of City of Albuquerque Ordinances Section 14-11-8.

DECISION:

APPROVAL of a permit to protect solar rights for 1031 Monte Largo DR NE along the southern dwelling façade from 1027 Monte Largo DR NE.

APPEAL:

If you wish to appeal this decision, you must do so by December 7, 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
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