



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

TGG LLC (Agent Isaccson & Arfman, Inc - Justin Simenson) requests a Variance of 5,266 sq ft to the required 10,890 sq ft lot size in the R-A zone for Lot 43/NLY Portion of, Alvarado Gardens Unit 2, located at 2827 Rio Grande Blvd NW, zoned R-A [Section 14-16-5-1(C) Table 5-1-1]

Special Exception No:.....	<b>VA-2024-00223</b>
Project No: .....	<b>PR-2024-010728</b>
Hearing Date: .....	10-15-24
Closing of Public Record: ..	10-15-24
Date of Decision: .....	10-30-24

On the 15<sup>th</sup> day of October, 2024, Isaccson & Arfman, Inc - Justin Simenson, agent for property owner TGG LLC (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 5,266 sq ft to the required 10,890 sq ft lot size in the R-A zone (“Application”) upon the real property located at 2827 Rio Grande Blvd NW (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 5,266 sq ft to the required 10,890 sq ft lot size in the R-A zone.
2. The ZHE finds that the Applicant has authority to pursue this Application.
3. All property owners within 100 feet and affected neighborhood association(s) were notified.
4. 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)(3).
5. The City of Albuquerque Integrated Development Ordinance (“IDO”), 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 a single lot that are not self-imposed and that do not apply generally to other property in the same zone district and vicinity, including but not limited to size, shape, topography, location, surroundings, physical characteristics, natural forces, or by government actions for which no compensation was paid. Such special circumstances of the lot either create an extraordinary hardship in the form of a substantial and unjustified limitation on the reasonable use or economic 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.*”

6. 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).
7. The 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).
8. Applicant appeared and gave evidence in support of the Application.
9. Based on evidence in the record, it is unclear whether there are any special circumstances applicable to a single lot (the Subject Property) that are not self-imposed and that do not apply generally to other property in the same zone district and vicinity, including but not limited to size, shape, topography, location, surroundings, physical characteristics, natural forces, or by government actions for which no compensation was paid. Applicant cites in its justification letter and testimony the geometry of the Subject Property (a narrow lot width and 5:1 aspect ratio of the parcel) present special circumstances. It appears from maps in the record that there are other lots in the vicinity with similar dimensions to the Subject Property – for instance across Rio Grande Blvd and down Campbell Rd. However, there does not appear to be evidence in the record regarding whether these apparently similar lots are zoned the same as the Subject Property. The ZHE believes a deferral would be appropriate to allow submittal of further evidence as to whether special circumstances exist, as well as the other matters discussed in this notification of decision.
10. Also, even if special circumstances exist, a variance would require that such special circumstances either create an extraordinary hardship in the form of a substantial and unjustified limitation on the reasonable use or economic return on the property, or practical difficulties result from strict compliance with the minimum standards. It would appear from the record that fewer lots would be permissible as of right, however, it is unclear why fewer lots would create an extraordinary hardship in the form of a substantial and unjustified limitation on the reasonable use or economic return on the property, or practical difficulties. Making less money because a developer cannot create more lots does not, alone, constitute an extraordinary hardship. Further, it is unclear why practical difficulties would arise from creating fewer lots.
11. In line with the foregoing, even if there were special circumstances that cause either an extraordinary hardship or practical difficulties, it is unclear whether the variance requested would be the minimum necessary to avoid extraordinary hardship or practical difficulties.
12. The ZHE commends the Applicant team for the many positive aspects about the proposed development. However, the ZHE's hands are tied to rule upon the specific criteria for a variance, not whether a proposed project would be a substantial improvement to what currently exists on the Subject Property.
13. Also, the ZHE commends the Applicant team for having met with several neighbors and neighborhood representatives. However, there is evidence in the record that the same outreach was not made to one affected neighborhood association. The ZHE encourages the Applicant team to communicate with all concerned parties.
14. Finally, the ZHE suggests that, if the Application cannot satisfy all the prongs of the variance test by substantial evidence, the Applicant team consider whether there may be other mechanisms in the IDO, perhaps before decision-making bodies other than the ZHE, to accomplish Applicant's desired development plans or some adjusted version thereof.

DECISION:

DEFERRAL of the ZHE hearing on the Application to the November 19, 2024, ZHE hearing which begins at 9:00 a.m.

APPEAL:

If you wish to appeal this decision, you must do so by November 14, 2024 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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