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

WRB Restaurants LLC - Roy Hernandez (Agent EPNM Inc - Zeon Signs) requests a Variance of 103 ft to allow for an Illuminated Signs within 200ft from residential zone for Lot H10, Block 0000, Ventana Square at Ventana Ranch, located at 9500 Universe Blvd NW, zoned MC-M [Section 14-16-5-12 (E)(5)(C)(1)]

Special Exception No:	**VA-2024-00203**
Project No:	**PR-2024-004024**
Hearing Date:	09-17-24
Closing of Public Record:	09-17-24
Date of Decision:	10-02-24

On the 17th day of September, 2024, EPNM Inc – Zeon Signs, agent for property owner, WRB Restaurants LLC – Roy Hernandez ("Applicant") was scheduled to appear before the Zoning Hearing Examiner ("ZHE") requesting a variance of 103 ft to allow for an Illuminated Signs within 200ft from residential zone ("Application") upon the real property located at 9500 Universe Blvd. NW ("Subject Property"). Below are the ZHE's finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 103 ft to allow for an Illuminated Signs within 200ft from residential zone.
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. Applicant 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 MX-M.
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 layout, as well as the location of existing public and private improvements, creates 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 development of the Subject Property.
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 develop the Subject Property in a manner consistent with the IDO and the Development Process Manual (DPM).
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, 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 usability 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 usability of the site. Thus. the applicant is not requesting more than what is minimally necessary for a variance.
16. The requirements of IDO Section 14-16-6-6(O)(3)(a) are satisfied.

17. There was some discussion at the hearing that the requested variance may not be necessary under applicable IDO provisions. In any event, to avoid any doubt, the ZHE is issuing this NOD to confirm that the requested sign is allowed as proposed.

DECISION:

APPROVAL of a variance of 103 ft to allow for an Illuminated Signs within 200ft from residential zone

APPEAL:

If you wish to appeal this decision, you must do so by September 19, 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.

Robert Lucero, Esq.
Zoning Hearing Examiner

cc:

ZHE File
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