

CITY OF ALBUQUERQUE
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ZONING HEARING EXAMINER NOTICE OF DECISION

Special Exception Number: VA-2026-00107

Project Number: PR-2026-000135

Hearing Date: 08-18-26

Closing of Public Record: 08-18-26

Date of Decision: 09-02-26

Case Description: Sol Housing, Miriam Hicks; Metropolitan Redevelopment Agency, Jenny Jackson (Owner) and Jackie Fishman, Consensus Planning (Agent) requests a Variance for building height over 45-feet not set back the required 20-feet from the front property line on Tract 1 Plat for Silver Gardens Subdivision located at 101 Silver St SW and containing approximately 0.7966 acres.

On August 18, 2026, Jackie Fishman (“Agent”) was scheduled to appear before the Zoning Hearing Examiner (“ZHE”) requesting Variance to height without setback (“Application”) upon the real property located at 101 Silver St SW (“Subject Property”). Below are the ZHE’s findings of fact and decision.

FINDINGS,

1. Applicant is requesting a Variance of 30 feet, 7-inches feet for a portion of the front building façade facing Silver Avenue to exceed the maximum 45-foot building height within 20 feet of the front property line, pursuant to City of Albuquerque Code of Ordinances Integrated Development Ordinance (“IDO”) § 14-16-6-6(O).
2. Applicant has authority to pursue this Application, pursuant to IDO § 14-16-6-4(D).
3. Applicant has duly authorized Agent to act on Applicant’s behalf regarding the Application.
4. Applicant is not required to offer a meeting to Indian Nations, Tribes, and before filing the application, pursuant to IDO § 14-16-6-4(B).

5. The Planning Director's delegee has determined that the Application is complete as of July 7, 2026, pursuant to IDO § 14-16-6-4(G).
6. The analyses and studies listed in IDO § 14-16-6-4(H) are not required.
7. The Application was not required to be referred to commenting agencies pursuant to IDO § 14-16-6-4(I).
8. The content of the notice of the Application satisfies IDO § 14-16-6-4(J)(1).
9. Applicant has sent an electronic mail notice to the email addresses on file with the Office of Neighborhood Coordination for Neighborhood Associations within 660 feet as required by IDO § 14-16-6-4(J)(2).
10. Applicant has sent mailed notice to all property owners within 100 feet of the subject property as required by IDO § 14-16-6-4(J)(3).
11. Applicant has posted sign notice(s) as required by IDO § 14-16-6-4(J)(4).
12. The Subject Property is located in the MX-FB-UD zone district, which requires a 45-foot maximum building height for those portions of a building less than 20 feet from the front property line pursuant to IDO Table 2-4-11 Dimensional Standards in the MX-FB Sub-Zones.
13. Therefore, a building height of 75 feet, 7-inches on the front property line of the Subject Property requires a Variance – ZHE pursuant to IDO § 14-16-6-6(O).
14. The Albuquerque/Bernalillo County Comprehensive Plan and the City of Albuquerque Integrated Development Ordinance (IDO) are incorporated herein by reference and made part of the record for all purposes.
15. IDO § 14-16-6-6(O)(3)(a) (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.*"
16. Applicant appeared at the August 18, 2026 ZHE hearing on the Application and gave evidence in support of the Application.

17. Applicant bears the burden of providing a sound justification for the requested decision, based on substantial evidence, pursuant to IDO § 14-16-6-4(E)(3).
18. Applicant bears the burden of showing compliance with required standards through analysis, illustrations, or other exhibits as necessary, pursuant to IDO § 14-16-6-4(E)(4).
19. 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 IDO § 14-16-6-6(O)(3)(a)(1):
 - a. The Subject Property is currently owned by the City's MR Agency who issued an RFP for development of the property. After the award was made, the original developer later determined the project, which was not workforce housing, was not economically feasible. Subsequently, the MR Agency redirected the project award to the Applicant, Sol Housing, who has worked with the MR Agency to maximize the number of dwelling units while offering commercial space in accordance with the City's plans, policies, goals, and regulations.
 - b. The Subject Property is physically constrained by being less than 1 acre in size and is further constrained by having three street frontages along the south, east, and west, plus a public alley along the north side, which limits how the project is designed in accordance with the MX-FB-UD subzone. The building is approximately 296 feet in length and runs the full block length between First Street and Second Street. The proposed design reduces a long and uniform façade along this edge by providing deeply recessed areas with taller end caps and center area containing elevators, a stairwell, mailbox area, common areas, and a limited number of units within the end caps and center area on the upper floors. Requiring the building to adhere to the 45-foot height restriction within 20 feet of the front property line would remove needed dwelling units and create a more solid, monolithic wall along Silver Avenue, thereby reducing the human scale of the building at this street edge.
 - c. These constraints are not self-imposed, but rather are the result of the modest size and street frontages of the subject property and its urban context, requirements of the IDO and MX-FB-UD zoning standards, and the need to provide additional housing within Downtown Albuquerque with access to transit and other urban services in concert with the MR Agency's goals, plans, and project requirements. These are conditions that do not apply to other properties in the MX-FB-UD zone within Downtown. Strict compliance with the 45-foot maximum height within 20 feet of the front property line would result in practical difficulties and extraordinary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the property.
 - d. Removing the portions of the building that do not meet the setback requirements would result in a significant reduction in the two second-floor courtyard areas, which are proposed to meet the IDO's usable open space requirements and offer recreational amenities for residents and their children, reduction or removal of the interior common areas on the second floor, reduction of at least six dwelling units,

and cause a substantial redesign of the internal building circulation (i.e. elevators and stairwell). These impacts significantly reduce the feasibility of constructing a functional mixed-use building and restricts the reasonable use and return on the property, public investment, and advancement of the Central Albuquerque Planning Area and the Downtown 2050 Redevelopment Plan.

20. 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 IDO § 14-16-6-6(O)(3)(a)(2).
 - a. The Subject Property is surrounded by multi-story structures containing a mix of apartments, commercial retail, and parking. To the north is a five-story, public parking structure that is built to the street edge; to the south is a four-story, multi-family building with 2-foot setbacks along Silver Avenue; and to the west is a mixed-use, 4-story building (Imperial Building) built to the street edge and designed with taller end caps. This area of Downtown is intended for high density, mixed-use development with access to the City's transit system, which is exactly what the Applicant is proposing, and the MR Agency is desiring for the property. The Variance relates solely to a dimensional standard pertaining to building height and does not affect the Downtown area or the project's compliance with public safety, health, or welfare.
 - b. The requested Variance will not create unsafe conditions, obstruct emergency access, or adversely affect public infrastructure. The building remains consistent with the intensity and character of development anticipated in the Downtown area and within the MX-FB-UD sub-zone district, which is intended to accommodate urban, mixed-use development that reinforces a well-defined urban character.
21. 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 IDO § 14-16-6-6(O)(3)(a)(3). The subject property is located within a dense Downtown context characterized by multi-storied, mixed-use buildings at an appropriate urban scale of development along Silver Avenue and Second Street. The building is designed with taller end caps at First Street and Second Street, which is a common architectural design approach at urban intersections. The Variance will not introduce an incompatible massing or intensity compared to the surrounding built environment, many of which are built at the sidewalk edge and do not include stepback elements on upper floors like the Applicant is proposing for this project. The stepbacks starting on the second floor provide an articulated and modulating façade that will reduce the perceived bulk of the structure and maintain a pedestrian-scale along the majority of the Silver Avenue frontage. The Variance will also not adversely affect infrastructure improvements in the vicinity. The project provides an urban infill design, relying on existing public streets, utilities, and services designed to accommodate higher-density development. No modifications are proposed that would cause undue use on existing infrastructure systems. Access, circulation, and internal building systems are integrated within the site and consistent with IDO development standards.
22. 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 IDO § 14-16-6-6(O)(3)(a)(4):

- a. The requested variance will allow a design solution that advances the core objectives of the IDO and the ABC Comprehensive Plan by supporting compact urban infill development, pedestrian-oriented design, and a well-defined urban character within the Downtown Center.
 - b. The stated purpose of the MX-FB-UD sub-zone district is to allow a wide range of residential, commercial, and institutional uses while ensuring that development establishes or reinforces a cohesive urban form through form-based design standards. The requested Variance will enable a design that aligns with these objectives while maintaining compatibility with surrounding properties.
 - c. The proposed 6-story, mixed-use building is designed with active ground-floor commercial use, a strong and engaging street presence, and a building form that reinforces the urban fabric of Downtown Albuquerque. The requested Variance does not alter the fundamental use, intensity, or character envisioned for the subject property within the MX-FB-UD subzone. Instead, it allows a limited exception from a dimensional standard while preserving the overall goals of walkability, urban density, and pedestrian engagement.
 - d. The requested Variance will also support the level of residential density and urban form envisioned by the Downtown 2050 Redevelopment Plan and the Central Albuquerque Planning Area Assessment while maintaining an active pedestrian-oriented streetscape. Strict adherence of the 45-foot height limitation within 20 feet of the property line would substantially reduce the efficiency of the upper floors and limit the project's ability to deliver the housing and mixed-use development promoted by the two plans.
23. Based on evidence submitted by or on behalf of Applicant, the Variance approved [is/is not] the minimum necessary to avoid extraordinary hardship or practical difficulties as required by IDO § 14-16-6-6(O)(3)(a)(5).
- a. The request is narrowly defined to accommodate the unique physical constraints of the property, which is less than 1-acre in size and has three street frontages on the south, east, and west, plus a public alley to the north.
 - b. The proposed design of the building minimizes the extent of the requested Variance to 20% of the total front façade facing Silver Avenue through a deliberate and creative massing approach that incorporates deep stepbacks of up to 55 feet, 7-inches, varied setbacks, and façade articulation that helps activate the street edge. Rather than maintaining a full building wall at a height of 45 feet for the entire block along Silver Avenue similar to the adjacent buildings to the south and west, the project incorporates substantial stepbacks for the upper floors and provides additional height above 45 feet only where necessary and essential to accommodate dwelling units, common areas, and critical building systems.
 - c. Strict compliance with the 45-foot height limitation within 20 feet of the front property line would require significant reductions in the two outdoor courtyards on the second floor, thereby reducing the ability to meet usable open space requirements and provide recreational amenities to residents, reduce the number of dwelling units, and require a substantial redesign of the internal circulation and functionality of the building. The Variance requested is the minimum necessary to prevent the practical difficulties created by the site's constraints and strict adherence to the maximum building height standard of the MX-FB-UD subzone.

DECISION:

APPROVAL of a Variance to Height for building height over 45-feet not setback the required 20-feet from the front property line on Tract 1 Plat for Silver Gardens Subdivision located at 101 Silver ST SW.

APPEAL:

If you wish to appeal this decision, you must do so by September 17, 2026. Pursuant to IDO § 14-16-6-4-(U), you must demonstrate that you have legal standing to file an appeal.

PERIOD OF VALIDITY:

Approval of a Variance-ZHE is valid for one (1) year from date of approval.

OTHER REQUIREMENTS:

THIS NOTICE OF DECISION DOES NOT CONSTITUTE APPROVAL OF PLANS FOR A BUILDING PERMIT.

Successful applicants are reminded that other regulations of the City must be complied with, even after approval of a special exception is secured. If your application is approved, submit this Notice of Decision when you apply for any related building permit or other necessary permit.



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