

**City of Santa Fe  
Governing Body  
Findings of Fact and Conclusions of Law**

**27794 West I-25 Frontage Road**

**2024-8995-APPL The Bungalows on Cerrillos Setback Variance Request (Planning Commission Case No. 2023-7662)**

**2024-8996-APPL The Bungalows on Cerrillos Slope Variance Request (Planning Commission Case No. 2023-7662)**

THIS MATTER came before the City of Santa Fe (“City”) Governing Body (“Governing Body”) for a public hearing on January 9, 2025 (“Hearing”) to consider Brian Nenninger, Orion-West LLC’s (“Appellant’s”) appeal (“Appeal”) of the City’s Planning Commission (“Commission”) decision to deny setback and slopes variances in Case No. 2023–7662. In that case, the Commission voted to deny variances to the City’s City Code (“SFCC” or “Code”) requiring 45-foot setbacks in the Cerrillos Road Highway Corridor protection district (CRHC) (“Setback Variance”) and prohibiting disturbances to natural 30% slopes (“Slopes Variance”), on the grounds that the requested variances did not meet the Code’s mandatory criteria for variances.

The record on appeal (“Record”) includes the following documents and recordings:

1. Verified Appeal Petitions by Appellant
2. Staff report memorandum dated December 6, 2024, to Members of the Governing Body from Rebecca Mnuk-Herrmann, Assistant City Attorney;
3. The packet of material presented to the Commission for its hearing on beginning on May 16, 2024 and concluding on July 11, 2024, which included Planning and Land Use Department Planning Commission Staff Report and Appellee’s Application Materials;
4. Findings of Fact and Conclusions of Law, adopted by the Commission on September 5, 2024 and filed with the City Clerk on December 5, 2024;
5. Planning Commission meeting minutes;
6. Submittals by Appellant;
7. Submittals by Appellee;
8. Testimony by and arguments by the Appellant made during the Hearing; and
9. Testimony and expert opinions by City staff given at the Hearing.

After conducting a public hearing, the Governing Body hereby FINDS, as follows:

**FINDINGS OF FACT**

1. The Governing Body reviewed the Record, including the report of City staff and the presentations from the Appellant and Applicant, and took testimony from interested members of the public. The Governing Body also heard responses from City staff members in response to questions from the Appellant, the Applicant, and members of the Governing Body.

2. The property (“Property”) is approximately 19-acre vacant lot located in the northwest quadrant of the intersection of Cerillos Road and I-25 W Frontage Road at 27794 West I-25 Frontage Road.
3. The Property is located in a General Commercial or “C-2” zoning district, which allows for a wide range of residential and commercial development, including multi-family housing, retail, and other uses.
4. The Appellant applied for a Setback Variance and Slopes Variance from the Commission in order to build a 141-unit, one- and two-story multi-family residential development consisting of multiple detached units, as described in a development plan that the Appellant submitted to the Commission simultaneously with the variance requests.
5. Specifically, the Appellant requested variances to subsections of the Code requiring 45-foot setbacks in the Cerrillos Road Highway Corridor protection district (CRHC) and prohibiting disturbances to natural 30% slopes.
6. Section 14-3.16 (C) of the Code requires land use boards to make a number of specific findings before granting a variance:
  - a. special circumstances apply to the property, such as unusual physical characteristics or the existence of a legal nonconformity;
  - b. the special circumstances make it infeasible, for reasons other than financial cost, to develop the property in compliance with the City Code;
  - c. that the variance does not increase the intensity (extent) of development beyond what the Code allows;
  - d. the requested variance is the minimum variance that will make possible the reasonable use of the land or structure; and
  - e. that the variance is not contrary to the public interest.
7. The Commission denied both the Setback Variance and the Slopes Variance on the grounds that the requested variances did not meet the Code’s mandatory criteria for variances.
8. The Property is subject to several environmental and government restrictions based on Department of Transportation requirements, a flood zone, and a portion of the area containing natural slopes greater than 30% grade.
9. However, the Property can be developed in compliance with the standards of Chapter 14, without a variance. Possible types of developments that can be constructed on the Property without a variance include, but are not limited to, a multi-family housing development of same number of housing units proposed in the Appellant’s development plan but more vertical construction and a development with no additional vertical construction but fewer residential units.

### **CONCLUSIONS OF LAW**

Under the circumstances and based upon the Record and the evidence and testimony submitted at the Hearing, the Governing Body independently weighs the evidence and CONCLUDES as follows:

1. The Governing Body has the power and authority to hear and decide the matter that is the subject of the Appeal under SFCC 1987, Sections 14-2.2 (F) and 14-3.17 (H)(3)(a).
2. *De novo* is the proper standard of review under SFCC 1987, Sections 14-2.2 (F) and 14-3.17 (H)(3)(a).

3. The Commission decision on July 11, 2024, 2024 is a final action subject to appeal under SFCC 1987, Section 14-3.17 (A)(1)(b).
4. The Governing Body may reverse or affirm, wholly or partly, or may modify the Commission decision under SFCC 1987, Section 14-2.2 (D).
5. Appellant timely filed the Appeal.
10. Because special circumstances do not make it infeasible, for reasons other than financial cost, to develop the property in compliance with the Code, and because the Property could still be used for many types of General Commercial development, including multi-family housing, a variance is not permitted under the Code.

**WHEREFORE, IT IS ORDERED ON THE 12<sup>th</sup> DAY OF FEBRUARY 2025 BY THE GOVERNING BODY OF THE CITY OF SANTA FE:**

The Governing Body votes to uphold the Commission decision and DENIES the Appeal.

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Mayor


\_\_\_\_\_  
Date:

FILED WITH THE CITY CLERK:

\_\_\_\_\_  
Andrea Salazar  
City Clerk

\_\_\_\_\_  
Date:

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Rebecca Mnuk-Herrmann  
Assistant City Attorney

2/5/2025  
Date: