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Case # 2024-89916 APPL

**VERIFIED APPEAL  
 PETITION**

**\*\*Two originals of this form must be filed. The Land Use Department Director or his/her designee will enter the date and time of receipt and initial both originals. See Section 14-3.17(D) SFCC 2001 for the procedure.\*\***

**Appellant Information**

Name: Advanced Acquisitions LLC  
 Last First M.I.  
 Address: c/o Brian Nenninger, Orion-West LLC  
 Street Address Suite/Unit #  
2213 Brothers Road #800, Santa Fe NM 87505  
 City State ZIP Code  
 Phone: ( 832 ) 338-0364 E-mail Address: brian.nenninger@orion-west.com  
 Additional Appellant Names: \_\_\_\_\_

Correspondence Directed to:  Appellant  Agent  Both

**Agent Authorization (if applicable)**

I/We: Jeremy Hall on behalf of Advanced Acquisitions LLC  
 authorize Brian Nenninger, Orion-West LLC to act as my/our agent to execute this application.  
 Signed: [Signature] Date: 8/16/24  
 Signed: \_\_\_\_\_ Date: \_\_\_\_\_

**Subject of Appeal**

Project Name: Bungalows on Cerrillos variance (Slopes)  
 Applicant or Owner Name: Advanced Acquisitions LLC (Attn: Jeremy Hall)  
 Location of Subject Site: 27794 W I-25 Frontage Road  
 Case Number: 2023-7663 Permit Number (if applicable): n/a

**Final Action Appealed:**

Issuance of Building Permit  Other Final Determination of LUD Director

Final Action of Board or Commission (specify):  Planning Commission  Board of Adjustment  BCD-DRC  HDRB

Basis of Standing (see Section 14-3.17(B) SFCC 2001):

**Applicant is the owner**

Basis for Appeal:  The facts were incorrectly determined  Ordinances/laws were violated and/or misrepresented

Description of the final action appealed from, and date on which final action was taken:

Denial of the set back variance case #2023-7663;

Check here if you have attached a copy of the final action that is being appealed.

\*\*See Exhibit A



## Exhibit A

### Description of Harm

The denial of the slope variance for Case #2023-7663 imposes significant harm on the feasibility and integrity of the proposed Bungalows on Cerrillos development. The project, which has been meticulously designed to accommodate a 141-unit multi-family development, is heavily constrained by the natural topography of the site, specifically the presence of naturally occurring slopes greater than 30%.

The denial forces the project to either significantly reduce the developable area or undergo extensive redesign, both of which are not only financially burdensome but also detrimental to the overall layout and effectiveness of the development. The unique topography of the site includes a remnant of the original bank of the Arroyo de los Chamisos, which no longer functions in its original capacity due to past alterations from nearby infrastructure developments. Preserving this isolated and now functionally obsolete slope area does not serve the intended purpose of the slope management regulations, which aim to prevent erosion and protect the natural environment.

Moreover, without the variance, the project faces severe limitations in achieving a uniform and practical grade across the development, which is essential for creating an accessible and cohesive development. The loss of potential housing units due to this restriction not only diminishes the project's viability but also reduces the much-needed housing supply in the area, exacerbating the housing shortage.

The denial of the slope variance not only imposes significant financial and developmental challenges but also undermines the overall public interest by limiting the availability of housing in the community.

### Basis for Appeal

The requested area variance was improperly denied by the Planning Commission because the applicant satisfied the criteria for the granting of variances as stated in its application letter and the evidence and arguments presented to the Planning Commission, and as stated below. As a result, the Planning Commission misapplied the provisions of Section 14-3.16(C) of the Santa Fe City Code.

1. ***One or more of the following special circumstances applies: (a) unusual physical characteristics exist that distinguish the land or structure from others in the vicinity that are subject to the same relevant provisions of Chapter 14, characteristics that existed at the time of the adoption of the regulation from which the variance is sought, or that were created by natural forces or by government action for which no compensation was paid.***

There are areas with naturally occurring slopes of thirty percent (30%) or greater, totaling 4,764.81 square feet, which represents only 0.006 percent of the 19.218-acre site. The majority of the property has average slopes of five percent (5%). The 30% sloped area is a

remnant of the original bank of the Arroyo de los Chamisos, left intact before the construction of the Cerrillos Road improvements and the installation of the bridge that now carries stormwaters under Cerrillos Road. When the bridge was constructed, the Arroyo de los Chamisos was realigned, redirecting stormwaters to the north of the site, leaving this remnant bank isolated. As a result, the original bank remains south of the new channel, creating a small island of 30 percent slopes. Notably, all other 30% slopes on the property were removed during previous grading of the property, making this isolated area the only portion of the slope that wasn't previously graded.

2. ***The special circumstances make it infeasible, for reasons other than financial cost, to develop the property in compliance with the standards of Chapter 14.***

The inability to grade the remnant of portion of this slope of the Arroyo de los Chamisos will render it infeasible to develop a substantial portion of the property because of the grade that will occur north of the remnant bank. Much of the property is designed to be completed at a single, even grade. Attempting to design around the sloped area is not viable for any development.

3. ***The intensity of development shall not exceed that which is allowed on other properties in the vicinity that are subject to the same relevant provisions of Chapter 14.***

The property is zone C-2, and the intensity of allowable development is unaffected by the grant of the variance. C-2 zoning requirements are performance based, and the proposed development of multifamily is well below what would be allowed on this property using taller, more traditional multifamily units -- the allowed height being 45 feet and the proposed heights being no more than 28 feet.

4. ***The variance is the minimum variance that will make possible the reasonable use of the land or structure. The following factors shall be considered: (a) whether the property has been or could be used without variances for a different category or lesser intensity of use; (b) consistency with the purpose and intent of Chapter 14, with the purpose and intent of the articles and sections from which the variance is granted and with the applicable goals and policies of the general plan.***

A disturbance of .006% of the site containing the naturally occurring slopes of the 30% is a minimal disturbance and is the minimum variance that will make the reasonable use of the northern portion of the site for the detached, two-story multifamily structures. The variance is consistent with the purpose and intent of the terrain management restriction of prohibiting disturbances of 30% slopes, because the variance will not:

1. Increase the threat of flooding and the hazard of improper cuts and fills, or increased erosion and sedimentation.
2. Result in the destruction of the sensitive landscape.
3. Harm the scenic character of Santa Fe from the visual blight of indiscriminate cuts and fills and vegetation removal resulting from extensive grading and utility scars.

4. Accelerate stormwater runoff on natural drainage ways and all structures due to increased development and impervious surfaces; or
5. Degrade arroyo channels.

Therefore, under the applicable standard, the variance is the minimum required.

**5. *The variance is not contrary to the public interest.***

Along an arroyo, the purpose preserving 30% slopes (i.e., to prevent erosion of arroyo banks, prevent unnatural redirection of arroyo channels and storm water) is not accomplished by preserving a geographic feature that has no relevance to current conditions. Further, preserving the slopes will not protect sensitive wildlife habitat or degrade and enhance the natural aesthetics associated with arroyos. The removal of this remnant bank will not run counter to these goals; there is no storm erosion created, or water channel adversely affected, as the channel is no longer in this location, and this patch of 30 slope is neither constitute wildlife habitat nor possesses any aesthetic quality. In short, variance is not contrary to the public interest.

As additional grounds for this appeal, the Planning Commission incorrectly concluded that the variance criteria pertain only to physical characteristics of land and structures and not to the consistency of floodplain management practices across interconnected sites. In this case, the proposed modifications to the project site are inseparable from those previously approved at the 5201 Beckner site, both of which are located along the Arroyo de los Chamisos within the same regional floodplain. The physical characteristics of the project site must be considered in conjunction with those of the 5201 Beckner site to ensure coherent and effective flood management across this shared watercourse.

In addition, the Planning Commission has granted variances based on the need for consistent flood management, as evidenced by the approval of modifications at the 5201 Beckner site, which included channel improvements and the construction of a bridge that resulted in a decrease in Base Flood Elevations (BFEs) and the width of the Special Flood Hazard Area (SFHA). The project site, being part of the same hydrological system, requires similar modifications to achieve comparable flood control benefits. The Planning Commission's decision to not grant the necessary modifications at the project site is arbitrary and capricious and has resulted in selective enforcement of the variance criteria, as it disregards the established need for consistency in land-use decisions.

The Planning Commission also incorrectly concluded that there are no special circumstances that make it infeasible for reasons other than financial cost to develop the Project site in compliance with the standards of Chapter 14 because the site's modifications were dismissed as unnecessary. However, the hydrological continuity between the Project and 5201 Beckner sites constitutes circumstances that satisfy this part of the variance criteria. Just as the modifications at the 5201 Beckner site were deemed essential to maintaining and enhancing the flood-carrying capacity of the Arroyo de los Chamisos, the

same logic and necessity apply to this project site. Denying these modifications undermines the integrity of the flood management improvements already established by the 5201 Beckner project.

The Planning Commission also improperly concluded that the granting of the requested modifications at the Project site would be contrary to the public interest because it would set a precedent for unnecessary alterations to the floodplain. However, similar floodplain modifications, including those at the 5201 Beckner site, which involved significant changes to BFEs and SFHA widths, have been approved by the Planning Commission. These modifications have been essential for creating more logical and viable development projects, demonstrating that such changes are not only justified but also beneficial to the overall planning and development within the area. Denying the modifications at the Project site contradicts this established approach and fails to recognize the broader benefits that similar adjustments have already provided in comparable cases.

#### Relief Requested

The applicant requests that the decision of the Planning Commission be reversed and that the requested slope variance be granted.

- \* The appellant requested a copy of the Findings of Fact and Conclusions of Law for Case #2023-7662, which is scheduled for approval by the Planning Commission on September 5, 2024. However, staff are unable to provide the documents at this time. As a result, the appellant will attach the Findings of Fact and Conclusions of Law once they are received from staff.