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Case # 2024-8995 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 #
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 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 (Setback)
 Applicant or Owner Name: Advanced Acquisitions LLC (Attn: Jeremy Hall)
 Location of Subject Site: 27794 W I-25 Frontage Road
 Case Number: 2023-7662 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 #2023-7662;

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 setback variance for Case #2023-7662 imposes significant harm on the feasibility and integrity of the proposed Bungalows on Cerrillos development. The project has been carefully designed to accommodate a 141-unit multi-family development but is severely constrained by both the natural features of the site and additional requirements from the New Mexico Department of Transportation (NMDOT). Specifically, the property is burdened by the extensive area occupied by the Arroyo de los Chamisos, which renders approximately 22 percent of the site undevelopable. Additionally, a required dedication for public roadways further reduces the developable acreage by another 25 percent.

The denial of the setback variance forces the project to either drastically reduce the number of residential units or undergo a complete redesign, both of which are burdensome but also detrimental to the overall layout and functionality of the development. The unique configuration of the site, including the required setback from the Cerrillos Road right-of-way, does not align with the intent behind the setback regulation, which aims to create adequate separation between the roadway and adjacent structures. This particular property has a unique circumstance of a substantial added distance from the roadway to the property line creating a much larger separation than the setback would otherwise provide without this circumstance.

Without approval of the variance request, the project faces significant limitations in efficiently utilizing the developable area that is critical for maintaining project viability. The loss of potential housing units due to this restriction weakens the project's feasibility and diminishes its contribution to addressing the local housing shortage. A denial of the setback variance imposes substantial developmental challenges and undermines the overall public interest by reducing the availability of much-needed housing in the community and disrupting the practical use of the property.

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.***

The property is uniquely burdened by the expansive Arroyo de los Chamisos, a naturally occurring feature that renders approximately 22 percent of the site undevelopable. This natural constraint is further compounded by road improvement requirements imposed by

NMDOT, which will occupy 20 percent of the property. Additionally, the NMDOT-mandated location and design of the I-25 Frontage Road further reduces the developable area by cutting off an additional 5 percent of the property. Approximately 47 percent of the property is unavailable for development due to natural features and governmental actions for which no compensation or relief has been or will be provided. These significant physical and regulatory constraints create a set of unique and challenging conditions that distinguish this property from others in the vicinity.

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 special circumstances described above allow approximately 53 percent of the site available for development. The requirement of a 45-foot setback further reduces the usable area, resulting in a loss of fourteen (14) residential units. This reduction severely hinders the project's ability to meet essential development standards and optimally utilize an already limited property.

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 zoned C-2 and the intensity of the development remains unaffected by the granting of the variance. The proposed multifamily development is within zoning compliance and is less intense than other properties in the vicinity. Additionally, permissible zoning height is 45 feet, the proposed project heights do not exceed 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.*

The variance request seeks to position the nearest structure 34 feet from the property line, which aligns with the intent of the Cerrillos Road overlay to maintain significant physical separation between the roadway and buildings. The separation is emphasized by the wide right-of-way in this section of Cerrillos Road; the distances from the westernmost southbound lane to the property line ranges from 87 to 200 feet, thus making the nearest structures 121 feet from the driving lane at the nearest point and 234 feet at its farthest point. This distance alongside the 34ft setback ensure substantial separation that is consistent with the purpose of the corridor objectives.

Under the applicable standard, the variance is the minimum is required.

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

The purpose of the setback is to reduce the impact of development in the corridor from the drivers' perspective. The distance from the most westerly southbound lane is approximately 87 to 200 feet from outer edge of the driving lane to the property line. The approval of the variance would place the nearest structure 34 feet from the property line, thus 121 feet to 234 feet from the driving lane. The multifamily homes are no more than two stories and will setback from the travel lanes of Cerrillos Road greater than the distance of other buildings along Cerrillos Road that comply with setback requirements. The appearance of the buildings along the Cerrillos Road frontage will have the same visual perception as other buildings along Cerrillos Road. The variance applies only to Cerrillos Road and has no effect on nearby residential neighborhoods. Residential neighborhoods are limited to the western boundary of the property.

As additional grounds for this appeal, the Planning Commission failed to appropriately consider how the requested setback variance aligns with the broader goals and objectives of the CRHC Cerrillos Road Highway Corridor Protection District. The CRHC district is specifically designed to ensure that development along Cerrillos Road accommodates safe and efficient traffic and contributes to a visually attractive and cohesive entranceway into Santa Fe. This approval would achieve a balance between maintaining the district's visual and functional integrity and accommodating practical development needs.

The Planning Commission incorrectly concluded that there are no special circumstances making it infeasible to develop the project site in compliance with the standards of Chapter 14, beyond financial cost, dismissing the need for the setback variance as unnecessary. However, the unique site constraints and the project's location within the CRHC district clearly constitute special circumstances that satisfy this part of the variance criteria. Variances should be granted when they align with and support the district's intent. The same logic applies to this project site. Denying this variance request undermines the city's objectives by imposing a subjective interpretation of the variance criteria.

The Planning Commission also improperly concluded that granting the requested setback variance at the project site would be contrary to the public interest because it would set a precedent for unnecessary alterations to the district's standards. This variance request is essential in creating a logical and viable development project, demonstrating that approval is justified and beneficial to the overall planning and development within the area. Denying a setback variance that allows for a 34-foot distance instead of the required 45 feet on a property where the distance to Cerrillos Road significantly exceeds the overlay's setback requirements contradicts the established principles for evaluating variance requests. A denial of the request overlooks the broader benefits of the project, including maintaining the intent of the setback while effectively utilizing the site. By granting the variance, the project can proceed in a manner that respects both the physical constraints of the property and the goals of the Cerrillos Road overlay.

Relief Requested

The applicant requests that the decision of the Planning Commission be reversed and that the requested setback 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.