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CITY OF ALBUQUERQUE
LAND USE APPEAL UNDER THE IDO
BEFORE AN INDEPENDENT
LAND USE HEARING OFFICER

APPEAL NO. AC-25-05

VA-2025-00133 (ZHE – Variance),
MZIP-2025-00021 (Appeal)

**City on a Hill Church, Paster Dan Miller,
Maria Gonzales, Appellants.**

PROPOSED DECISION

INTRODUCTION
RELEVANT BACKGROUND
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PROPOSED FINDINGS

I. INTRODUCTION

On November 20, 2025, the City on a Hill Church by and through their agents (Appellants) filed an appeal with the City Planning Department. The Appellants are appealing a final decision of the Zoning Hearing Examiner (ZHE) who denied their variance application for a wall sign that projects perpendicular out from the East side wall facade of a church building. The Appellants sought the variance because the sign is proposed to extend out from the building wall facade more than what is allowed in the Integrated Development Ordinance (IDO). The material facts are undisputed.

After reviewing the record in full, holding a quasi-judicial hearing on the appeal, a hearing in which the Appellants and others were afforded an opportunity to testify, cross examine testimony, and supplement the record, I respectfully recommend that the City Council deny the appeal and uphold the ZHE's decision. As discussed in detail below, the ZHE's decision is well supported with substantial evidence in the record. Conversely, the Appellants have not met their minimal burdens of proof under the IDO to support the variance. What follows is a brief discussion of the relevant factual and procedural history, a discussion of the standard of appellant review, and a detailed discussion of the facts and the IDO criteria applicable to the variance application.

II. RELEVANT BACKGROUND

The City on a Hill Church appellants (hereinafter "CHC" or "Appellants") are represented by Maria Gonzales, an agent with Zeon Signs, and Pastor Dan Miller, a representative of the CHC [R. 029, 031]. The CHC is located at 3715 Silver Avenue SE, Albuquerque, 87108 [R. 029]. The church building is zoned MX-M (mixed use-medium intensity zone district) [R. 038]. See also IDO, § 2-4(C)(1).

Under the IDO Appellants have many options for signage. This will be discussed below. Apparently, the sign that the Appellants sought the variance for was previously located at a different church site in Albuquerque so Appellants now desire to reuse or "refurbish" it for the CHC site at 3715 Silver Ave. [R. 077]. The sign's dimensions are well documented in the record; the overall size of the sign spans 72 inches tall by 55.5 inches wide, and 8 inches deep (thick) [R. 024]. The proposed sign encompasses luminous tubing and is therefore also defined

as an illuminated sign under the IDO [R. 021]. See IDO, § 7-1, Definitions.

Appellants wish to mount the sign perpendicular to the Church's East wall facade so that the content of its two faces can be seen from the North and South of the site [R. 018-024].

In order to accomplish this, the sign must be mounted on the wall in a manner that is defined in the IDO as a "projection sign;" a subclass of a "wall sign." See IDO, § Table 5-12-3. For visual clarity, the IDO includes with the definition of a projection sign, a depiction of one. See Exhibit 1 below:



Exhibit 1. IDO, §7-1, Definition, Projection sign.

Under the IDO, in any zone district, projection signs can only project (extend) out from a wall facade it is affixed to a total of 30 inches. IDO, § Table 5-12-3. The Appellants' sign plans clearly show that the sign is intended to project out from the church wall a total of 57.5 inches [R. 024].¹

In the appeal hearing, City Planning Department Staff testified that before the CHC applied for the variance, their sign plan was submitted and reviewed by Staff with the City Zoning Enforcement Department and that the Appellants were advised that they could not

1. Although the record shows that the sign is designed to project out from the wall a total of 57.5 inches, the precise variance request is to allow for the sign to project out 66 inches from the wall [R. 019].

mount the proposed sign in the manner that was proposed as a projection sign without violating the IDO or without an approved variance [R. 015 and LUHO Hearing].

Appellants submitted their variance application to the City Planning Department Staff during the Summer of 2025 [R. 017]. A preapplication conference between City Planning Staff and the Appellants was held in August 2025 [R. 074].

The ZHE's quasi-judicial public hearing on the sign was scheduled for September 16, 2025 [R. 019]. The hearing was deferred because there was an issue regarding notification to property owners within 100 feet of the application site [R. 046]. After the notification error was corrected, the ZHE held a quasi-judicial hearing via Zoom on October 21, 2025 [R. 054]. After the hearing, in a written decision, dated November 5, 2025, the ZHE concluded that the Applicants-failed to meet their evidentiary burden of proof for the variance under IDO, § 6-6-6(O)(3)(a) and denied the application [R. 006-008].

Appellants filed this timely appeal on November 20, 2025 [R. 009]. The Appellants have standing to appeal under IDO, § 6-4(U)(2)(a)1; they are the applicants of the variance at issue in this appeal. [R. 012]. In their appeal, the Appellants did not claim that the ZHE erred, but instead they "acknowledged the ZHE findings," and presumably to mitigate the visual secondary effects of the illuminated sign, they now propose eliminating the flashing illumination feature of the sign [R. 009].

III. STANDARD OF REVIEW

A review of an appeal under the IDO is a whole record review to determine whether the ZHE's decision approving the variance was fraudulent, arbitrary, or capricious under the

IDO; or whether the decision is not supported by substantial evidence; or if in approving the application, the ZHE erred in the facts, or in applying the requirements of the IDO regulations. See IDO, § 6-4(U)(3)(d). The Land Use Hearing Officer (LUHO) has been delegated the authority by the City Council to hold a quasi-judicial appeal hearing, make findings, and to propose a disposition of an appeal, including whether the decision should be affirmed, reversed, or otherwise modified to bring the decision into compliance with the standards and criteria of the IDO. If a remand is necessary to clarify or to supplement the record or if a remand will expeditiously dispose of the matter, the City Council has delegated authority to the LUHO to remand appeals independently and directly to the original decision maker for reconsideration or for further review. IDO, § 14-16-6-4(U)(3)(d).

IV. DISCUSSION

There is unambiguous and undisputed factual evidence in the record that supports the ZHE's decision. Moreover, there is no basis to conclude that the ZHE erred in applying the IDO to the facts. Although the Appellants are proposing to eliminate the flashing illumination feature of the sign, this slight change does not impact the basis for the ZHE's denial. Therefore, under these circumstances a remand would not be appropriate.

A. The Variance Test

Notably, under IDO, § 6-4(E)(3), when submitting an application to Planning Staff and or to any reviewing body under the IDO, an *"applicant bears the burden of providing a sound justification for the requested decision, based on substantial evidence."* Next, because this application concerns a variance, it is prudent to commence this discussion with a review of the

IDO's variance criteria. Under the IDO, a variance is an exception to the strict dimensional standards encompassed in the IDO. See IDO, Definitions, § 7-1. Depending on the type of variance request, variances are generally reviewed by the ZHE.² The variance test or criteria for deciding the Appellants' sign variance can be found in IDO, § 6-6(O)(3). It states in full:

Review and Decision Criteria

6-6(O)(3)(a) General

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.

(Emphasis added.)

All five prongs of the variance test must therefore be met by an applicant before a variance can be approved. The first prong of the variance analysis has two subparts and first

2. Variances proposed through subdivisions and with certain building site plans are decided by the Environmental Planning Commission (EPC). Whether decided by the ZHE or by the EPC, the variance criteria for judging whether a variance should be approved is essentially the same test.

requires that applicants demonstrate that *“there are special circumstances applicable to the property”* on which the variance is sought. However, only certain classes of “special circumstances,” are eligible. The special circumstance(s) claimed must be directly attributable to the subject property at which the variance is proposed, and the special circumstance(s) must not have been *“self-imposed”* by an applicant. The exclusion of “self-imposed” circumstances is further highlighted in the second clause of the first sentence of § 6-6(O)(3)(a)1 which lists some examples of special circumstances. Although the list of what qualifies as a special circumstance in the first prong is not exhaustive for qualifying circumstances, it does include some clear examples, including *“physical characteristics ... or government action for which no compensation was paid.”* See IDO, § 6-6(O)(3)(a)1.

In addition, the second subpart of the first prong requires that the applicants demonstrate that the special circumstance must also 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.”* See IDO, § 6-6(O)(3)(a)1. This requirement further limits eligibility for a variance. The implication is that approving the proposed variance must effectively diminish the adverse effects of the special circumstance in some meaningful manner.

This second subpart of the first prong is often overlooked by applicants. It essentially challenges an applicant to show just how necessary the variance is because the applicant must show that without the variance considerable hardship or practical difficulty will ensue.

The second and fourth prongs essentially implicate broad policy concerns about whether a proposed variance will adversely impact the public and the IDO. Like the “hardship

or "practical difficulties" subparts of the first prong, these prongs are rarely considered by applicants in their variance applications; but they are exceedingly significant to the overall variance analysis. Generally, an applicant must prove that the variance will not adversely impact the community or enforcement of the IDO. Specifically, prongs two and four are designed to elicit evidence about whether approving a particular variance either sets a bad precedent and or will be destructive to the regulation that is being sought to be eased or excused.

The third prong has to do with how the variance might affect or disturb the surrounding physical community, it is circumstantial in nature, but it is a necessary part of the test and cannot be disregarded in the overall analysis of a variance. The fifth prong requires an applicant to demonstrate that the dimension regulation the applicant is seeking to be excused from, is what is minimally needed to adequately alleviate the extraordinary hardship or practical difficulty caused by the special circumstance. Finally, it must be reemphasized, that **all** five prongs must be proved and met by an applicant. The ZHE's decision regarding the facts in the record under the variance test follows.

B. The decision of the ZHE denying the application is well-supported by the record and the IDO

Because the variance sought is from the IDO's sign regulations, the IDO's stated purposes of the regulations are involved in the analysis. In general, under the IDO, the sign regulations are intended to *"promote and protect the public health, welfare, and safety by regulating all types of existing and proposed signs."* See IDO, § 5-12(A). Another policy purpose of the sign regulations that is more specifically applicable to the Appellants'

application states that the sign regulations are intended to *"reduce hazards that may be caused by signs overhanging or projecting..."* IDO, § 5-12(A).³

In their application to the ZHE, the Appellants disregarded the evidentiary requirements of IDO, § 6-6(O)(3)(a) and instead rationalized their variance request by showing the ZHE how the variance will benefit the Church and the community **[R. 051]**. Appellants argued that refurbishing their sign from the previous location is cost effective for the Church **[R. 055]**. Appellants also argued that affixing the sign in the manner that violates the IDO will allow for maximum visibility of the sign from the North (Central Ave.) and from the South (Silver Ave.) **[R. 055]**. The ZHE essentially found that these rationales justifying the variance were insufficient under IDO, § 6-6(O)(3)(a). **[R. 007, Fndgs. 17 & 18]**.

In the ZHE's hearing, Appellants also responded to the Planning Staff's recommendation that Appellants install a pole sign at the site instead of seeking the variance. Without any evidence to support the theory, Appellants argued that a pole sign will present security concerns to the Church **[R. 053]**. Appellants claim that installing a pole sign at the site would give people the ability *"to climb that sign and have access to a window, break into the building"* and *..."we felt like mounting it the building would be a better aesthetic"* **[R. 053]**.

In the ZHE's November 5, 2025, decision, the ZHE made several factual findings regarding the Appellants' application and specifically regarding their justifications for the variance. Three key findings relate directly to why the Appellants' application failed to satisfy the variance test under the IDO **[R. 007]**. These three findings are the crux of the ZHE's

3. Notably, this policy purpose appears to refer to protecting "public right-of-way." However, the policy is equally applicable to reducing **any** hazard to the public potentially caused by hanging signs.

227 decision denying the variance.

228 First, the ZHE found that despite Appellants' claims, the Appellants failed to present
229 any evidence regarding the variance criteria and specifically failed to show how the property
230 creates a special circumstance. The ZHE expressly found that:

231 there are no special circumstances that are not self-imposed and
232 that do not apply generally to other property in the same zone and
233 vicinity such as size, shape, topography, location, surroundings,
234 or physical characteristics created by natural forces or
235 government action for which no compensation was paid [R. 007,
236 Fndg. 17].
237

238 The ZHE further concluded that a pole sign is a viable alternative (with the *existing*
239 *sign*) that would abrogate the need for a variance, that would comply with the IDO, and that
240 would provide the same visibility of the sign's content from the North and South [R. 007,
241 Fndg. 17]. The ZHE determined that Appellants' rejection of the pole mounted sign alternative
242 was based on the Appellants' choices to reduce its costs, perceptions of "aesthetics," and to
243 locate the sign in a manner that violates the IDO, which are self-imposed conditions that are
244 not valid reasons for issuing a variance under the IDO [R. 007, Fndg. 17].⁴ The ZHE further
245 concluded that because Appellants have reasonable alternatives that do not require a variance,
246 the Appellants could not satisfy the first and the second subpart of the first prong of the
247 variance test--special circumstances, and extraordinary hardship or practical difficulties.⁵

248 After reviewing the record, I find that the ZHE's findings and the decision on the first

4. As discussed below, there are other signage alternatives to a pole sign.

5. Although the ZHE did not explain this in detail, I find that the alternatives to the variance are rational, reasonable, and in fact would substantially diminish or mitigate any hardship or practical difficulties that could have been alleged.

prong of the variance test are not arbitrary or capricious and are well supported by the IDO and the facts in the record. Appellants failed to show that the property presents any qualifying special circumstances under IDO, § 6-6(O)(3)(a)1. Said another way, the variance is not based on a special circumstance that is related to the site, but instead it is based wholly on Appellants' desire to refurbish and reuse an existing sign in a manner that violates the IDO.

Furthermore, Appellants' argument that a pole mounted sign presents adverse security issues is merely unsupported supposition; Appellants presented no evidence to support the theory. Under the IDO, the burden of proof for applicants is substantial evidence. See IDO, §§ 6-4(E)(3), 6-4(L)(5)(c) and 6-4(M)(1) respectively. Thus, the ZHE did not err in Finding that the Appellants presented insufficient evidence to support their arguments under the first prong for a variance.

The ZHE also concluded that the Appellants failed to demonstrate with any applicable evidence how their variance request satisfies the second, third, fourth, and fifth prongs of IDO, § 6-6(O)(3)(a)1. The ZHE concluded that:

Applicant's analysis appears to focus solely on direct impacts, neglecting broader public concerns, which form the basis of the inquiry. Additionally, Applicant has provided little to no evidence to support the assertion that the sign will not adversely affect neighboring properties or infrastructure... **[R. 007, Fndg. 18]**.

The analysis that the ZHE referenced is Appellants' subjective contentions that the projection manner of mounting the sign *"greatly improves safety/security and keeps the sign as least obtrusive as possible for neighborhood sight lines. Mounting the sign on a pole would also increase costs by thousands of dollars and create unwanted safety and aesthetic concerns"* **[R. 030]**. This argument is not only too speculative because it is based entirely on Appellants'

subjective perceptions; it is a total disregard of what the IDO requires of applicants under prongs two through five of IDO, § 6-6(O)(3)(a).

Furthermore, Appellants' argument irrationally assumes that the only alternative is a pole sign. A pole sign is not the only alternative under the IDO. The IDO permissively allows a broad array of signage options, some of which would satisfy Appellants' visibility criteria and alleged security issues. For example, the Appellants are free to place a projection sign that faces North and South on the East exterior wall facade as long as it does not project out more than 30 inches from the wall. It bears reemphasizing that the facts clearly show that the purpose of the variance is essentially to allow for the accommodation of Appellants' existing sign so that Appellants can reduce their signage costs.

Accordingly, I respectfully find that approving the variance under these circumstances will not only materially undermine the intent and purpose of IDO, § 5-12(D) (Sign Permitting regulations) but approving the variance under these circumstances would also materially undermine the intent of the variance regulations as well. A variance can only be approved if "all" five prongs of the test are met. See IDO, § 6-6(N)(3)(a). What's more, Appellants' desire and choice to refurbish and mount a specific existing sign in a manner that violates the IDO just to save costs is an improper basis for disregarding the variance test under the IDO. Thus, the ZHE's decision is supported by the facts in the record.

Finally, in the appeal of the ZHE's decision, the Appellants now argue that the special circumstances justifying the variance include that the *"church occupies a non-standard corner with limited sightline exposure that prevents a wall sign from serving its intended purpose"* [R. 010]. However, in the appeal hearing, Appellants did not elaborate on this alleged special

circumstance; The meaning of a "non-standard corner" is unknown because the Appellants failed to explain what a "non-standard" corner means and how this condition is related to the church building as a special circumstance.⁶ What corner Appellants contend is "non-standard" is also unknown. Moreover, Appellants failed to explain in any way how the alleged non-standard corner prevents signage that fully complies with the IDO as opposed to a sign that they would like to be mounted in a manner that will violate the IDO. Moreover, even if there were sufficient facts in the record to support this new theory (which there are not), Appellants' application is still deficient as discussed above regarding the other multiple criteria for a variance.

Finally, although the ZHE did not discuss the fifth prong of IDO, § 6-6(O)(3)(a)(5), it is clear in the record that the requested variance is not what is minimally necessary. The Appellants sign plan demonstrates that the sign will project from the wall a total of 57.5 inches [R. 021]. However, the Appellants are requesting a total of 66 inches of projection, not 57.5 inches [R. 016]. In any event, as shown above, because there are reasonable alternatives to signage that do not require a variance, Appellants still cannot satisfy the fifth prong.

V. PROPOSED FINDINGS

1. The decision appealed is a decision issued by the ZHE denying a variance for a projection sign that exceeds what is allowed in the IDO.

2. The appellants' appeal is timely filed under § 6-4(U)(3)(a)1.

6. Note that the variance criteria of the first prong requires that a special circumstance must "be applicable to a single lot." This criteria demands that the special circumstance relate specifically to the CHC property, not a street corner.

3. Under IDO, § 6-4(U)(2)(a)1, the Appellants have standing to appeal the variance decision because the appellants are the applicants of the variance request.

4. A quasi-judicial appeal hearing was held on January 15, 2026, in which the Appellants, the general public, and City Staff were all allowed to present evidence, and cross examine testimony.

5. The record shows that the ZHE denied the variance because the Appellants failed to justify the variance under the evidentiary requirements of IDO, § 6-6(O)(3)(a) (the variance criteria).

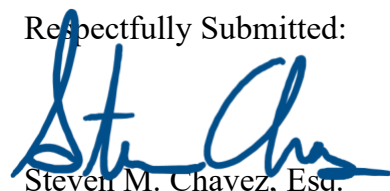
6. The ZHE's decision is supported by substantial evidence in the record.

7. In their appeal, the Appellants submitted no new evidence to support any of the requirements that they were required to prove under IDO, § § 6-6(O)(3)(a) (the variance regulation).

8. There is insufficient evidence in the record to support granting the variance application.

9. The appeal should be denied and the ZHE's decision should be upheld.

Respectfully Submitted:



Steven M. Chavez, Esq.
Land Use Hearing Officer
January 27, 2026

Copies to:

City Council
Appellants
Appellees/ Party Opponents
Planning Staff

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Notice Regarding City Council Rules

When the Council receives the Hearing Officer’s proposed disposition of an appeal, the Council shall place the decision on the agenda of the next regular full Council meeting provided that there is a period of at least 10 days between the receipt of the decision and the Council meeting. The parties may submit comments to the Council through the Clerk of the Council regarding the Hearing Officer’s decision and findings provided such comments are in writing and received by the Clerk of the Council and the other parties of record four (4) consecutive days prior to the Council “accept or reject” hearing. Parties submitting comments in this manner must include a signed, written attestation that the comments being submitted were delivered to all parties of record within this time frame, which attestation shall list the individual(s) to whom delivery was made. Comments received by the Clerk of the Council that are not in conformance with the requirements of this Section will not be distributed to Councilors.