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

APPEAL NO. AC-24-29

PR-2024-010860, VA-2024-00262, VA-2024-00317

Faith Lutheran Church, Appellants.

PROPOSED DECISION

INTRODUCTION
RELEVANT BACKGROUND
STANDARD OF REVIEW
DISCUSSION
PROPOSED FINDINGS

I. INTRODUCTION

This is an appeal from a decision of the Zoning Hearing Examiner (ZHE). Under the Integrated Development Ordinance (IDO), effective August 2024, without a variance, illuminated signs, which includes electronic signs, cannot be “within 200 feet in any direction of any residential zone district and visible from that zone district.” IDO, § 5-12(E)(5)(c)1. In this matter, the applicant-appellant applied for a variance from this provision to replace an existing nonconforming illuminated sign with an electronic sign. Finding that the applicant-appellant did not demonstrate sufficient facts to support the variance, the ZHE denied the application.

At the appeal hearing the applicant-appellant supplement the record with specific

36 evidence to address how the proposed sign will not materially impact the surrounding
37 neighborhood, and in doing so, I respectfully find that the applicant-appellant (Church) can
38 now satisfy all five prongs of the variance test in the IDO. Rather than remand the appeal
39 back to the ZHE, I respectfully recommend that the City Council reverse the ZHE’s decision,
40 grant the appeal, and approve the application with reasonable conditions that will further
41 mitigate the impact of the sign as described below.

42

43 **II. RELEVANT BACKGROUND**

44

45 The Appellant is the Faith Lutheran Church, located at 10000 Spain Road NE (Church)
46 [R. 011]. The Church is situated on a lot that encompasses 8.5689 acres [R. R. 011]. The lot
47 is zoned MX-T (Mixed-use – Transition Zone District) [R. 126]. The Church lot is primarily
48 surrounded by residentially zoned uses and zone districts [R. 126]. The Church has three
49 freestanding signs on a single signpost base that is located on its frontage with Spain Road [R.
50 063, 070]. The un rebutted testimony is that the sign base and the three freestanding signs
51 existed since at least 1995 [R. LUHO hearing, testimony of Hal Lewin]. All three
52 freestanding signs are illuminated at night [R. 070]. Illuminated signs, including electronic
53 signs under the IDO, without a variance, cannot be located within 200 feet of residential zones
54 or uses. These issues will be discussed in more detail below.

55 Because all three signs preexisted the IDO, are illuminated and are within 200 feet of
56 the nearby residential zone districts, under the IDO, they are nonconforming signs. Of the three
57 signs, the sign in the center on the base is an old style type “reader board” sign that requires
58 someone to physically stand on a ladder to change the message on it from time-to-time as

59 needed [R. 063].¹ It is the center reader board sign that the Church desires to exchange out
60 with an electronic, LED display sign [R. 117-118]. The proposed electronic sign will be similar
61 to the existing reader board in size and shape, but its message can be changed electronically
62 with a computer and its ambient lighting will be better controlled electronically [R. LUHO
63 hearing].

64 Procedurally, the Church through its agent, Juanita Garcia of JAG Planning & Zoning,
65 LLC, submitted the application for the proposed variance to exchange the existing illuminated
66 sign with the electronic sign on the Church’s sign base on August 19, 2024 [R. 028]. On
67 October 15, 2024, the ZHE held a public, quasi-judicial hearing on the application, and on
68 October 30, 2024, the ZHE issued the decision denying the application [R. 008]. The appeal
69 was timely filed on November 14, 2024 [R. 011]. The Church-appellants have standing to
70 appeal under IDO, § 6-4(U)(2)(a)1 because they are the listed owners of the property at issue
71 in this appeal [R. 028].

72

73 **III. STANDARD OF REVIEW**

74 A review of an appeal under the IDO is a whole record review to determine whether
75 the ZHE’s decision approving the variance was fraudulent, arbitrary, or capricious under the
76 IDO; or whether the decision is not supported by substantial evidence; or if in approving the
77 application, the ZHE erred in applying the requirements of the IDO, DPM, a plan, policy, or
78 regulation. IDO, § 6-4(U)(4). The Land Use Hearing Officer (LUHO) has been delegated the

1. Weekly messages regarding events and other relevant Church information are placed on the reader board with plastic black letters that must be altered physically [R. 063].

79 authority by the City Council to make findings and to propose a disposition of an appeal,
80 including whether the decision should be affirmed, reversed, or otherwise modified to bring
81 the decision into compliance with the standards and criteria of the IDO. The City Council has
82 further delegated authority to the LUHO to remand appeals independently and directly for
83 reconsideration or for further review if a remand is necessary to clarify or supplement the
84 record or if a remand will expeditiously dispose of the matter. IDO, § 14-16-6-4(V)(1)(c)4.

85

86 IV. DISCUSSION

87 As stated above, the existing illuminated sign which the Church appellants intend to
88 replace with an electronic sign is nonconforming because it is within 200 feet of a residential
89 zone.² A nonconforming use is a use “*that does not conform to the IDO requirements for land*
90 *uses in the zone district where it is located, but that was an approved use at the time the use*
91 *began.*” IDO, § 7-1, Definitions. Generally, under the IDO, a nonconforming use may continue
92 unabated until the use is discontinued. IDO, § 6-8(C)(1). Notably, changing a nonconforming
93 use of land to another use equally or more restrictive than the existing use is also permissible.
94 See IDO, § 6-8(C)(5).³ In addition, under the IDO, although an illuminated sign cannot be
95 located within 200 feet of a residential zone without a variance, an illuminated sign appears to
96 be allowed within a residential zone. See, IDO, § 5-12(H)(2)(b).

2. On the North side of Spain Rd from the Church property are R-1C zone districts and residential land uses [R. 126].

3. This provision was not invoked by the applicant as it also requires approval from the City’s Zoning Enforcement Officer (ZEO).

97 As stated above, because the existing illuminated, nonconforming sign is so close to
98 residential zone districts, the Church applicants applied for a variance to exchange the sign
99 with an electronic sign. Thus, this appeal necessarily involves the IDO’s five-prong test for
100 approving a variance. IDO, § 6-6(O)(3) states in full:

101 Review and Decision Criteria

102 6-6(O)(3)(a) General

103 An application for a Variance – ZHE shall be approved if it meets all of the
104 following criteria.
105

- 106 1. There are *special circumstances applicable to a single lot* that are not self-
107 imposed and that do not apply generally to other property in the same zone
108 district and vicinity, including but not limited to size, shape, topography,
109 location, surroundings, physical characteristics, natural forces, or by
110 government actions for which no compensation was paid. Such special
111 circumstances of the lot either create an extraordinary hardship in the form
112 of a substantial and unjustified limitation on the reasonable use or
113 economic return on the property, or practical difficulties result from strict
114 compliance with the minimum standards.
115
- 116 2. The Variance will not be materially contrary to the public safety, health,
117 or welfare.
118
- 119 3. The Variance does not cause significant material adverse impacts on
120 surrounding properties or infrastructure improvements in the vicinity.
121
- 122 4. The Variance will not materially undermine the intent and purpose of this
123 IDO, the applicable zone district, or any applicable Overlay Zone.
124
- 125 5. The Variance approved is the minimum necessary to avoid extraordinary
126 hardship or practical difficulties.
127
128

129 The first prong of the variance analysis requires that the applicants demonstrate that
130 “*there are special circumstances applicable to the property*” on which the variance is sought.
131 However, to qualify as a “special circumstance,” the alleged circumstance must meet certain
132 elements or attributes. The special circumstance(s) claimed must be directly attributable to the
133 subject property at which the variance is proposed, and the special circumstance(s) must not

134 have been “*self-imposed.*” The exclusion of “self-imposed” circumstances is further
135 highlighted in the following clause of the first sentence of § 6-6(O)(3)(a)1 which lists some
136 examples of special circumstances. Although the list of what qualifies as a special
137 circumstance in the first prong is not exhaustive of such circumstances that qualify, it does
138 include “*physical characteristics ... or government action for which no compensation was*
139 *paid.*” See IDO, § 6-6(O)(3)(a)1.

140 In their application, and before the ZHE, the Church through their agent argued that
141 Spain Rd. is a special circumstance because it is slightly curved and elevated near the existing
142 signs. They further contend that this condition shields the existing signs from being well seen
143 from Spain Rd., causing a special circumstance for a variance. I respectfully disagree that the
144 nearby road conditions qualify under IDO, § 6-6(O)(3)(a)1 as a special circumstance. These
145 road conditions generally apply to everyone located on Spain Rd. and are not due to a condition
146 on the Church property, and as such cannot be a special circumstance for a variance under
147 IDO, § 6-6(O)(3)(a)1.

148 However, there is evidence in the record that under the narrow facts of this matter, the
149 existing sign on the Church property qualifies under IDO, § 6-6(O)(3)(a)1 as a special
150 circumstance for a variance. Because of government action in enacting the IDO, the center
151 sign is a nonconforming sign.⁴

4. Notably, all nonconforming uses are not automatically special circumstances. However, in this case the nonconforming use is a limited exception. I note for the City Council that there are very specific and narrow facts in this matter that invoke the special circumstance for a variance—a nonconforming use that will be exchanged for a similar use and that will meet the other four prongs of the variance test, including that the remedy (a new sign) will have less of an adverse impact in ambient luminescence than the existing reader board sign. These unique facts are detailed below.

152 To better understand how the existing illuminated reader board, as a nonconforming
153 use, narrowly qualifies for a variance, additional facts in the record need to be discussed. First,
154 there is substantial evidence in the record that when the existing nonconforming, illuminated
155 reader board sign is illuminated at night, its illumination is much brighter than the proposed
156 electronic sign will be **[R. LUHO Hrg. testimony of H. Lewyn]**.⁵ Not only is the existing
157 sign outdated, but presumably because it is not an electronic sign, the ambient light it creates
158 cannot be dimmed or controlled without turning it off at night. Currently, the existing sign is
159 allowed to stay on through the night. Second, under the first prong of the variance test, there
160 is evidence that the alleged special circumstance, i.e, the reader board, creates a hardship
161 resulting in practical difficulties. The Church employees must physically change the reader
162 board message with a ladder and at times this can be dangerous **[R. LUHO Hrg. testimony**
163 **of H. Lewyn]**. Thus, there is unchallenged substantial evidence in the record that the act of
164 changing the messages on the existing reader board is a hardship resulting in practical
165 difficulties to Church employees **[R. 097]**. In this matter, there is a sufficient nexus between
166 the hardship and the special circumstance.

167 Next, there is substantial evidence in the record that the Church applicants have testified
168 that they intend to fully comply with the “Illumination, Brightness, and Images” regulations
169 of IDO, § 5-12(H)(4) with the electronic sign. Under the IDO, these regulations restrict the
170 ambient light illumination and (presumably, to significantly reduce driver distraction) it also

5. Mr. Lewyn testified that the existing reader board has incandescent bulbs behind a white board face that creates bright white light at night. Whereas the proposed electronic sign has LED lights behind a black board, softening the light and ultimately reducing the reflectiveness and ambient brightness. This evidence was not rebutted.

171 restricts the transition between messages on all new electronic signs. See IDO, § 5-12(H)(4).
172 Thus, under the IDO, because the illuminated reader board sign became nonconforming with
173 the enactment of the IDO, and because under IDO, § 6-8(C)(5), a nonconformity can be
174 changed, and the change will in fact reduce existing adverse impacts, I find that the first prong
175 for the variance is narrowly satisfied.

176 As for the second and the fourth prongs of the variance test, because the existing
177 nonconforming sign is essentially a nonconforming use, illuminates at a brighter ambient light
178 measurement than will the proposed electronic sign, and because the ambient light produced
179 by the new electronic sign can be dimmed and controlled electronically, I find that the variance
180 will not be materially contrary to the public safety, health, or welfare of the neighborhood and
181 it will not undermine the intent and purpose of the IDO. These prongs are significant to any
182 analysis in a variance test.

183 Next is a brief discussion of the third prong of the variance test which is what the ZHE
184 based his decision on to deny the variance; he found that the variance for the electronic sign
185 “*will cause significant adverse, material impacts on surrounding properties, contrary to § 6-*
186 *6(O)(3)(a)*” [R. 009, ZHE Fndg. 9]. This conclusion was based on testimony from
187 neighboring residents directly across Spain Rd. from the application site. However, the
188 testimony was based exclusively on the ambient light produced by the *existing*, nonconforming
189 reader board sign, not the impact from the proposed electronic sign [R. 099-102]. Because the
190 evidence in the ZHE’s record showed that the electronic sign would produce a lower ambient
191 light than does the existing sign does, the ZHE’s finding was error.

192 In further support of the decision denying the application, the ZHE concluded that

193 “[d]uring testimony, Applicant appeared unwilling to institute mitigating measures, such as
194 dimming or turning off lights during late night hours.” [R. 009]. Yet, the applicant, through
195 their agent testified that they are “amenable to any restrictions you may have as conditions of
196 approval in keeping with the spirit of the neighborhood” [R. 104]. I find that the ZHE erred
197 on his conclusion that the applicants were unwilling to institute mitigating measures.

198 As for the fifth prong of the variance test, I find that exchanging the reader board with
199 a similar in size and shape electronic sign that produces a lower ambient light than the existing
200 sign, is the minimum necessary to avoid the practical difficulty of physically changing the
201 reader board’s message. In addition, significant to the analysis of the third prong of the
202 variance test and to the issue of mitigation, there is now unrebutted evidence that the Church
203 has agreed to completely turn of the electronic sign’s lights between the hours of 10:00 PM
204 and 6:00 AM with the exception of Christmas Eve and Holy Week. This is substantial
205 evidence that the electronic sign (and variance) will not materially adversely impact the night-
206 sky or the nearby residential neighbors more than the existing reader board does. The evidence
207 shows that the proposed electronic sign will in fact mitigate the existing adverse impacts
208 created by the existing illuminated reader board sign. In addition, all these facts show that the
209 variance will not materially undermine the IDO or its intent.

210

211 V. PROPOSED FINDINGS

212 1. The decision appealed is a decision issued by the ZHE denying a distance variance
213 from the IDO’s 200-foot distance requirement between an illuminated sign and a residential
214 zone district under § 5-12(E)(5)(c)1 of the IDO update effective August 2024.

- 215 2. The appellants' appeal is timely filed under § 6-4(U)(3)(a)1.
- 216 3. Under IDO, § 6-4(U)(2)(a)1, the appellant has standing to appeal the variance
217 decision because the appellants are the Church and owner of the property listed in the variance
218 application.
- 219 4. The Appellants claims that the ZHE erred in applying the variance criteria to the
220 facts in the record.
- 221 5. The Appellants supplemented the record with new evidence to specifically address
222 deficiencies found by the ZHE and to mitigate the impacts of the electronic sign.
- 223 6. A quasi-judicial appeal hearing was held on January 8, 2025, in which the
224 Appellants, the general public, and City Staff were allowed to present evidence, and cross
225 examine testimony.
- 226 7. There is now sufficient evidence in the record to support granting the application
227 for the variance and reversing the ZHE's decision denying the variance.
- 228 8. There is substantial evidence in the record that the existing reader board sign which
229 the Appellants desire to exchange for an electronic sign creates a special circumstance that
230 does not generally apply to other similarly situated properties in the same zone district, that it
231 creates a practical difficulty, and that the proposed electronic sign will remedy the practical
232 difficulty as intended under IDO, § 6-6(O)(3)(a)1.
- 233 9. The special circumstance of the existing sign is that it is nonconforming and made
234 nonconforming by government action.
- 235 10. Although nonconforming uses generally do not qualify for variances, under the
236 specific and narrow facts of this matter, a variance in this instance will not undermine the IDO

237 or be contrary to the public safety, health, or welfare:

238 a. there is a sufficient nexus between the variance requested and the practical
239 difficulties;

240 b. there is substantial evidence that the variance will greatly mitigate existing
241 adverse impacts from the existing illuminated sign.

242 c. There is substantial evidence in the record that the proposed electronic sign is
243 less intrusive to the residential zone district and its residents because it will
244 produce less ambient light than does the existing sign it will replace, and it will
245 be turned off between the hours of 10:00 PM and 6:00 AM with exceptions
246 noted below.

247 11. Although the existing nonconforming sign will be replaced with another
248 nonconforming sign (electronic sign), under the IDO, § 6-8(C)(5), a nonconforming use of
249 land or a structure may be changed to another use “*equally or more restrictive*” than the
250 immediately preceding nonconforming use.

251 12. In this appeal matter, if approved with the conditions below, the existing
252 nonconforming illuminated sign will be changed (replaced) to another nonconforming sign
253 that is more restrictive and that will have less of an adverse impact in terms of ambient lighting
254 on the nearby residential neighbors than does the existing sign; thus, the IDO will not be
255 undermined.


256 13. There is substantial evidence in the record that the variance is the minimum
257 necessary to avoid the practical difficulties that exist with the existing illuminated sign reader
258 board.

259 14. The appeal should be granted, and the ZHE's decision should be reversed with the
260 following conditions of approval of the variance application:

261 a. The electronic sign's illumination shall not be on or produce any light during
262 from 10:00 PM until 6:00 AM every night except on Christmas Eve and during
263 the entire week of Holy Week only.

264 b. That the Appellants shall comply with the electronic sign regulations of IDO, §
265 5-12(H)(4) in placement and use of the electronic sign.

266 Respectfully Submitted:

267 
268 Steven M. Chavez, Esq.
269 Land Use Hearing Officer
270 January 17, 2025

271
272 Copies to:

273 City Council
274 Appellants
275 Appellees/ Party Opponents
276 Planning Staff
277

278
279 Notice Regarding City Council Rules

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