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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),
MZP-2025-00021 (Appeal)

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

PROPOSED DECISION

INTRODUCTION
RELEVANT BACKGROUND
STANDARD OF REVIEW
DISCUSSION
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.

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

46

47 **II. RELEVANT BACKGROUND**

48

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

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

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

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

63 In order to accomplish this, the sign must be mounted on the wall in a manner that is defined
64 in the IDO as a "projection sign;" a subclass of a "wall sign." See IDO, § Table 5-12-3. For

65 visual clarity, the IDO includes with the definition of a projection sign, a depiction of one. See

66 Exhibit 1 below:



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

75
76 Under the IDO, in any zone district, projection signs can only project (extend) out from
77 a wall facade it is affixed to a total of 30 inches. IDO, § Table 5-12-3. The Appellants' sign
78 plans clearly show that the sign is intended to project out from the church wall a total of 57.5
79 inches [R. 024].¹

80 In the appeal hearing, City Planning Department Staff testified that before the CHC
81 applied for the variance, their sign plan was submitted and reviewed by Staff with the City
82 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].

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

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

88 The ZHE's quasi-judicial public hearing on the sign was scheduled for September 16,
89 2025 [R. 019]. The hearing was deferred because there was an issue regarding notification to
90 property owners within 100 feet of the application site [R. 046]. After the notification error
91 was corrected, the ZHE held a quasi-judicial hearing via Zoom on October 21, 2025 [R. 054].
92 After the hearing, in a written decision, dated November 5, 2025, the ZHE concluded that the
93 Applicants-failed to meet their evidentiary burden of proof for the variance under IDO, § 6-6-
94 6(O)(3)(a) and denied the application [R. 006-008].

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

101

102 III. STANDARD OF REVIEW

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

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

115

116 **IV. DISCUSSION**

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

122 **A. The Variance Test**

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

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

131 Review and Decision Criteria

132 6-6(O)(3)(a) General

133 An application for a Variance – ZHE shall be approved if it meets *all* of the
134 following criteria.

- 135
136 1. There are *special circumstances applicable to a single lot* that are not self-
137 imposed and that do not apply generally to other property in the same zone
138 district and vicinity, including but not limited to size, shape, topography,
139 location, surroundings, physical characteristics, natural forces, or by
140 government actions for which no compensation was paid. Such special
141 circumstances of the lot either create an extraordinary hardship in the form
142 of a substantial and unjustified limitation on the reasonable use or
143 economic return on the property, or practical difficulties result from strict
144 compliance with the minimum standards.
- 145
146 2. The Variance will not be materially contrary to the public safety, health,
147 or welfare.
- 148
149 3. The Variance does not cause significant material adverse impacts on
150 surrounding properties or infrastructure improvements in the vicinity.
- 151
152 4. The Variance will not materially undermine the intent and purpose of this
153 IDO, the applicable zone district, or any applicable Overlay Zone.
- 154
155 5. The Variance approved is the minimum necessary to avoid extraordinary
156 hardship or practical difficulties.

157
158 (Emphasis added.)

159 All five prongs of the variance test must therefore be met by an applicant before a
160 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.

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

171 In addition, the second subpart of the first prong requires that the applicants
172 demonstrate that the special circumstance must also create an *“extraordinary hardship in the*
173 *form of a substantial and unjustified limitation on the reasonable use or economic return on*
174 *the property, or practical difficulties result from strict compliance with the minimum*
175 *standards.”* See IDO, § 6-6(O)(3)(a)1. This requirement further limits eligibility for a variance.
176 The implication is that approving the proposed variance must effectively diminish the adverse
177 effects of the special circumstance in some meaningful manner.

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

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

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

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

198

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

201
202 Because the variance sought is from the IDO's sign regulations, the IDO's stated
203 purposes of the regulations are involved in the analysis. In general, under the IDO, the sign
204 regulations are intended to *"promote and protect the public health, welfare, and safety by*
205 *regulating all types of existing and proposed signs."* See IDO, § 5-12(A). Another policy
206 purpose of the sign regulations that is more specifically applicable to the Appellants'

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

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

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

223 In the ZHE's November 5, 2025, decision, the ZHE made several factual findings
224 regarding the Appellants' application and specifically regarding their justifications for the
225 variance. Three key findings relate directly to why the Appellants' application failed to satisfy
226 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.

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

254 Furthermore, Appellants' argument that a pole mounted sign presents adverse security
255 issues is merely unsupported supposition; Appellants presented no evidence to support the
256 theory. Under the IDO, the burden of proof for applicants is substantial evidence. See IDO,
257 §§ 6-4(E)(3), 6-4(L)(5)(c) and 6-4(M)(1) respectively. Thus, the ZHE did not err in Finding
258 that the Appellants presented insufficient evidence to support their arguments under the first
259 prong for a variance.

260 The ZHE also concluded that the Appellants failed to demonstrate with any applicable
261 evidence how their variance request satisfies the second, third, fourth, and fifth prongs of IDO,
262 § 6-6(O)(3)(a)1. The ZHE concluded that:

263 Applicant's analysis appears to focus solely on direct impacts,
264 neglecting broader public concerns, which form the basis of the
265 inquiry. Additionally, Applicant has provided little to no
266 evidence to support the assertion that the sign will not adversely
267 affect neighboring properties or infrastructure... **[R. 007, Fndg.**
268 **18]**.

269
270 The analysis that the ZHE referenced is Appellants' subjective contentions that the
271 projection manner of mounting the sign *"greatly improves safety/security and keeps the sign*
272 *as least obtrusive as possible for neighborhood sight lines. Mounting the sign on a pole would*
273 *also increase costs by thousands of dollars and create unwanted safety and aesthetic concerns"*
274 **[R. 030]**. This argument is not only too speculative because it is based entirely on Appellants'

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

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

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

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

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

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

312

313 V. PROPOSED FINDINGS

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

316 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.

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

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

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

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

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

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

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

332 Respectfully Submitted:

333

334 
335 Steven M. Chavez, Esq.
336 Land Use Hearing Officer
337 January 27, 2026

338 Copies to:

339 City Council
340 Appellants
341 Appellees/ Party Opponents
342 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.