



CITY OF ALBUQUERQUE
OFFICE OF ADMINISTRATIVE HEARINGS
ZONING HEARING EXAMINER
NOTIFICATION OF DECISION

Carlmont Office Park Association requests a variance of 3 ft to the 3 ft max wall height in an MX-M zone for Lot 4, Carlmont Office Park Addition, located at 3804 Montgomery Blvd NE, zoned MX-M [Section 14-16-5-7(D)]

Special Exception No:..... **VA-2018-00171**
Project No: **Project#2018-001720**
Hearing Date: 12-18-18
Closing of Public Record: 12-18-18
Date of Decision: 01-02-19

On the 18th day of December, 2018, Kyle Deacon and Chris Dziak, agents for property owner Carlmont Office Park Association (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 3 ft to the 3 ft max wall height in an MX-M zone (“Application”) upon the real property located at 3804 Montgomery Blvd NE (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 3 ft to the 3 ft max wall height in an MX-M zone.
2. The City of Albuquerque Integrated Development Ordinance, Section 14-16-6-6(N)(3)(a) (Variance-Review and Decision Criteria) reads: “... an application for a Variance-ZHE shall be approved if it meets all of the following criteria:
 - (1) *There are special circumstances applicable to the subject property that are not self-imposed and that do not apply generally to other property in the same zone and vicinity such as size, shape, topography, location, surroundings, or physical characteristics created by natural forces or government action for which no compensation was paid. Such special circumstances of the property either create an extraordinary hardship in the form of a substantial and unjustified limitation on the reasonable use or 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 the IDO or the applicable zone district.*
 - (5) *The Variance approved is the minimum necessary to avoid extraordinary hardship or practical difficulties.”*
3. The Applicant bears the burden of ensuring there is evidence in the record supporting a finding that the above criteria are met under Section 14-16-6-6(N)(3)(c).
4. Kyle Deacon and Chris Dziak, agents for owner appeared and gave evidence in support of the application.
5. All property owners within 100 feet of the subject property and the affected neighborhood association were notified.
6. Hodgin Neighborhood Association is the affected neighborhood association.
7. A letter dated October 18, 2018 from the Hodgin Neighborhood Association, signed by Kathy Kleyboecker, President of the NA, was submitted in support of the Application.
8. The subject property is currently zoned MX-M.

9. The area has been designated an area of change.
10. There have been several reports of criminal vandalism on the subject property.
11. There are a number of professional offices that are tenants on the subject property.
12. Safety has been expressed as a major concern of employees for their tenants.
13. Many employees from these tenants are required to work after dark and are concerned for their safety.
14. Open parking lots encourage many individuals and vehicle drivers to short-cut across the subject property.
15. This has also created numerous traffic safety concerns among these same employees.
16. The subject business is set back from the main avenues of Montgomery and Carlisle, and contains areas of landscaping, which help create an environment for homeless individuals to camp out, which also creates safety issues.
17. The proposed fence will not impede existing traffic flow patterns.
18. The proposed fence will enhance public safety.
19. A majority of the business properties in the surrounding area are already enclosed in similar fencing and the proposed fence will architecturally match the existing surrounding security fencing.
20. Transportation reported conditional approval of the application, as long as the fence is see-thru above 3 feet and clear sight triangles are not visually impaired.
21. Sameer Roy, 4212 Carlisle NE, appeared in support of the application.
22. There are special circumstances applicable to the Subject Property that are not self-imposed and that do not apply generally to other property in the same zone and vicinity such as size, shape, topography, location, surroundings, or physical characteristics created by natural forces or government action for which no compensation was paid, as required by Section 14-16-6-6(N)(3)(a)(1).
23. The variance will not be contrary to the public safety, health and welfare of the community as required by Section 14-16-6-6(N)(3)(a)(2).
24. The variance will not cause significant adverse material impacts on surrounding properties or infrastructure improvements in the vicinity as required by Section 14-16-6-6(N)(3)(a)(3).
25. The variance will not materially undermine the intent and purpose of the IDO or applicable zone district as required by Section 14-16-6-6(N)(3)(a)(4).
26. The variance approved is the minimum necessary to avoid extraordinary hardship or practical difficulties as required by Section 14-16-6-6(N)(3)(a)(5).
27. The proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
28. The Applicant has authority to pursue this Application.

CONCLUSIONS OF LAW:

The criteria within Section 14-16-6-6(N)(3)(a) of the Albuquerque Zoning Code are satisfied.

DECISION:

APPROVAL of a variance of 3 ft to the 3 ft max wall height in an MX-M zone.

CONDITIONS: The design of the fence shall comply with Section 14-16-5-7.

If you wish to appeal this decision, you must do so by January 17, 2019 in the manner described below. A non-refundable filing fee will be calculated at the Planning Department's Land Development Coordination counter and is required at the time the Appeal is filed.

Appeal must be filed with the Planning Department within 15 days after the decision. The appeal shall specifically state the section of the Integrated Development Ordinance, City regulation, or condition attached to a decision that has not been interpreted correctly, as required by Section 14-16-6-4(U)(3)(a)(3) of the Integrated Development Ordinance. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, Planning Application Counter located on the west side of the lobby. **Please present this letter of notification when filing an appeal.** When an application is withdrawn, the fee shall not be refunded.

Once an appeal is accepted by the Planning Department, it shall prepare and transmit a record of the appeal together with all appeal material received from the appellant to impacted parties and to the Land Use Hearing Officer (LUHO) through the Clerk of the City Council.

The LUHO shall then schedule a hearing on the matter within 30 consecutive days of receipt and notify the parties, pursuant to Section 14-16-6-4(U)(3)(d).

The Planning Department shall give written notice of an appeal, together with a notice of the date, time and place of the hearing to the applicant, a representative of the opponents, if any are known, and the appellant.

Please note that pursuant to Section 14-16-6-4(U), of the Integrated Development Ordinance, you must demonstrate that you have legal standing to file an appeal as defined.

You will receive notice if any other person files an appeal. If there is no appeal, you can receive building permits any time after the appeal deadline quoted above; provided all conditions imposed at the time of approval have been met. However, the Zoning Hearing Examiner may allow issuance of building permits if the public hearing produces no objection of any kind to the approval of an application. To receive this approval, the applicant agrees in writing to return the building permit or occupation tax number.

Successful applicants are reminded that other regulations of the City must be complied with, even after approval of a special exception is secured. This decision does not constitute approval of plans for a building permit. If your application is approved, bring this decision with you when you apply for any related building permit or occupation tax number. Approval of a conditional use or a variance application is **void after one year** from date of approval if the rights and privileges are granted, thereby have not been executed or utilized.



Stan Harada, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
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