



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

Chee Tran requests a variance of 4 ft to the 3 ft required wall height in an MX-L zone for Lot 3A, Block 2, Emil Mann Addn, located at 7302 Zuni RD SE, zoned MX-L [Section 14-16-5-7(D)(1)]

Special Exception No: .....**VA-2018-00066**  
Project No: .....**Project# 2018-001420**  
Hearing Date: .....09-18-18  
Closing of Public Record: .....09-18-18  
Date of Decision: .....10-03-18

On the 18th day of September, 2018, property owner Chee Tran (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 4 ft to the 3 ft required wall height in an MX-L zone (“Application”) upon the real property located at 7302 Zuni RD SE (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 4 ft to the 3 ft required wall height in an MX-L zone.
2. The City of Albuquerque Integrated Development Ordinance Section 14-16-6-6(N)(3)(c) Variance for a Taller Front or Side Yard Wall reads: “A *variance application for a taller front or side yard wall shall be approved by the Zoning Hearing Examiner, if and only if, the Zoning Hearing Examiner finds all of the following:*
  - (1) *The proposed wall would strengthen or reinforce the architectural character of the surrounding area;*
  - (2) *The proposed wall would not be injurious to adjacent properties, the surrounding neighborhood, or the larger community;*
  - (3) *The wall is proposed on a lot that meets any of the following criteria:*
    - a. *The lot is at least ½ acre;*
    - b. *The lot fronts a street designated as a collector or above in the LRTS guide;*
    - c. *At least 20 percent of the properties within 330 feet of the lot where the wall or fence is being requested have a wall or fence over 3 feet in the front yard.*
  - (4) *The design of the wall complies with any applicable standard in Section 14-16-5-7 (Walls and Fences), including, but not limited to Subsection 14-16-5-7(E)(2) (Articulation and alignment) and Subsection 14-16-5-7(E)(3) (Wall Design), and all of the following:*
    - a. *The wall or fence shall not block the view of any portion of any window on the front façade of the primary building when viewed from 5 feet above ground level at the centerline of the street in front of the house.*
    - b. *The design and materials proposed for the wall or fence shall reflect the architectural character of the surrounding area.*

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. Chee Tran, owner appeared and gave evidence in support of the application.
5. All property owners within 100 feet and affected neighborhood association were notified of the application.
6. The subject property is currently zoned MX-L.
7. Trumbull Village Neighborhood Association is the affected neighborhood association.
8. The proposed fence would be constructed of wrought iron and would reinforce the architectural character of the area.
9. The proposed fence is on a lot which fronts a street designated as an urban arterial.
10. The wall is necessary for security reasons.
11. A letter from Roy Hamil, 405, 413 Chama SE, was submitted in opposition to the application.
12. Roy Hamil, appeared and gave evidence in opposition to the application.
13. He is the owner of the adjacent apartment buildings and has heard numerous complaints from his renters, regarding excessive and loud noises from the subject business late at night into the early morning.
14. Most of his renters are U.S. Veterans.
15. Hans Keil appeared and gave evidence in opposition to the application
16. He is a resident of the apartment adjacent to the subject property.
17. He alleges the business being operated on the subject property is an illegal, non-licensed business, which appears to run an automobile "chop shop" that operates late into the evening.
18. This business creates very loud, disturbing noises from grinding and cutting metal.
19. These noises cause disturbance and harm to his enjoyment of a quiet environment.
20. He alleges the business is unsafely and illegally running long, electrical extension cords from an adjacent property in order to operate their dismantling tools.
21. Sharon Hardin, appeared and gave evidence in opposition to the application.
22. She is a resident of the adjacent apartment building.
23. She also complains of loud noises, sometime late into the night, which disturbs her quiet enjoyment.
24. Stephanie McCauley appeared and gave evidence in opposition to the application.
25. She is a resident of the adjacent apartment building.
26. She feels that a 7 foot fence on the subject property would injure the adjacent apartment dwellers by making their residence feels like a jail.
27. Owner, Applicant, was given an opportunity to respond to the issues raised in opposition to the application.
28. She responded that the business failed to pay rent and were no longer at the property.
29. She failed to offer any proposal to mitigate the injuries suffered by adjacent properties.
30. The proposed wall would be injurious to adjacent properties, the surrounding neighborhood or the larger community.

### CONCLUSIONS OF LAW:

The criteria within Section 14-16-6-6(N)(3)(c) of The City of Albuquerque Integrated Development Ordinance are not satisfied.

### DECISION:

Request for a variance of 4 ft to the 3 ft required wall height in an MX-L zone is DENIED.

If you wish to appeal this decision, you must do so by October 18, 2018 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.



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Stan Harada, Esq.  
Zoning Hearing Examiner

cc: Zoning Enforcement  
ZHE File  
Chee Tran, 7720 Central Ave SE, 87108  
Roy Hamil, 727 El Alhambra Cir NW, 87107  
Stephanie McCauley, 405 Chama St SE #2, 87108  
Sharon Hardin, 413 Chama St SE, 87108  
Hanz Kiel, 405 Chama St SE, 87108