



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

Legacy Church Inc. requests a variance of 3ft to the 3ft maximum wall height for Lot 2A, Atrisco Business Park, located at 6900 Los Volcanes RD NW, zoned NR-BP [Section 14-16-5-7(D)]

Special Exception No:..... **VA-2019-00330**
Project No: **Project#2019-002931**
Hearing Date: 12-17-19
Closing of Public Record: 12-17-19
Date of Decision: 01-01-20

On the 17th day of December, 2019, property owner Legacy Church Inc. (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 3ft to the 3ft maximum wall height (“Application”) upon the real property located at 6900 Los Volcanes RD NW (“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 maximum wall height.
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 14-16-6-4(F)(2).
4. Applicant appeared at the ZHE hearing on this matter and gave evidence in support of the Application.
5. Applicant provided evidence that the proper “Notice of Hearing” signage was posted for the required time period as required by Section 14-16-6-4(K)(3).

6. Applicant provided evidence that all property owners and neighborhood association entitled to notice were notified of the Application.
7. Applicant has met its burden of providing evidence that establishes that 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). No evidence was submitted to the contrary.
8. Applicant has met its burden of providing evidence that establishes that 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). No evidence was submitted to the contrary.
9. Applicant has met its burden of providing evidence that establishes that 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). Specifically, Applicant provided testimony that there would be no adverse material impact. No evidence was submitted to the contrary.
10. Applicant has met its burden of providing evidence that establishes that 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). Specifically, Applicant provided testimony that there would be no effects contrary to the intent or purpose of the IDO or applicable zone district. No evidence was submitted to the contrary.
11. Applicant has met its burden of providing evidence that establishes that 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). Specifically, Applicant provided testimony and written evidence that the wall height is the minimum necessary to create a secure and safe environment on the subject property. No evidence was submitted to the contrary.
12. City Transportation submitted a report stating that, based on the drawings included in the application, the proposed fence appears to be within both the clear sight triangle and mini clear sight triangle. However, the fence will be constructed of wrought iron and is see-through. So long as the applicant does not alter the design of the wall to where it would no longer be see-through above 3 ft. within either clear sight triangle, Transportation does not object.
13. The ZHE finds that the proper “Notice of Hearing” signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
14. The ZHE finds that the Applicant has authority to pursue this Application.

DECISION:

APPROVAL WITH CONDITIONS of a variance of 3 ft to the 3 ft maximum wall height.

CONDITIONS:

- A. The design of the wall shall comply with any applicable design standards in Sections 14-16-5-7 (Walls and Fences); 7-7(E)(2) (Articulation and Alignment); 5-7(E)(3) (Wall Design) and Section 14-16-6-6(N)(3)(c)4 a and b.

B. Any proposed wall or fence design shall not violate the clear sight triangle as required by the City Traffic Engineering Division.

APPEAL:

If you wish to appeal this decision, you must do so by January 16, 2020 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.

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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cc:

ZHE File
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