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

Christy McCartney (Agent, Randolph Probst) request a variance of 3 feet to the 3 feet maximum wall height for Lot 183, MRGCD Map 38, located at 202 Rio Grande Blvd NW, zoned MX-T [Section 14-16-5-7(D)]

Special Exception No:..... **VA-2019-00377**
Project No: ..... **Project#2019-002517**
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 Christy McCartney ("Applicant") appeared before the Zoning Hearing Examiner ("ZHE") requesting a variance of 3 feet to the 3 foot maximum wall height ("Application") upon the real property located at 202 Rio Grande Blvd 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 adverse material impact. 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 proposed construction is within the area of the existing carport structure and would therefore be the minimum necessary. No evidence was submitted to the contrary.
12. Transportation issued a report indicating that the proposed wall is outside the clear sight triangle. So long as the applicant does not alter the design of the wall to where it would encroach within the 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 of a variance of 3 feet to the 3 foot maximum wall height.

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.

Robert Lucero, Esq.
Zoning Hearing Examiner

cc:

ZHE File
Zoning Enforcement
Christy McCartney, 202 Rio Grande Blvd NW, 87104
Randolph Probst, 1413 El Oriente SW, 87105