



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

Santa Fe Pacific Trust requests a variance of 3 ft to max 3 ft wall height in an MX-FB-UD zone for Lot 27A1, Block 8, NM Town Companies, located at 123 Central Ave NW, zoned MX-FB-UD [Section 14-16-5-7(D)]

Special Exception No:..... **VA-2018-00224**
Project No: **Project# 2018-001904**
Hearing Date: 03-19-19
Closing of Public Record: 03-19-19
Date of Decision: 04-03-19

On the 19th day of March, 2019, Property owner Santa Fe Pacific Trust (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 3 ft to max 3 ft wall height (“Application”) upon the real property located at 123 Central Ave NW (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 3 ft to max 3 ft 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(N)(1).
4. Narissa Whittington, agent for property 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. Downtown Neighborhood Association and Silver Platinum Downtown Neighborhood Association are the affected neighborhood associations and were properly notified.
7. Nothing has been submitted in opposition or support of the application.
8. No one appeared in opposition to the application.
9. The subject property is currently zoned MX-FB-UD.
10. A site plan and photographs were submitted in support of the Application.
11. The subject property is designated as a historic building in downtown Albuquerque.
12. Leslie Naji, Senior Planner of the CABQ Landmarks Commission, reviewed the application and sent an e-mail dated February 11, 2019 in support of the application.
13. The proposed wall height is appropriate as far as Historic Preservation is concerned.
14. The requested variance will have no adverse effect on the historic building.
15. The City of Albuquerque installed an ART station abutting the subject property to the east, as well as a Route 66 bus stop abutting the subject property to the south.
16. These city actions have resulted in an increased flow of foot traffic through the subject property's parking lot.
17. This increased foot traffic flow has resulted in a significant increase of crimes against the subject property, as well as staff, patrons and visitors to the subject property.
18. There have been multiple vehicle break-ins, harassment and armed robbery.
19. There has been a 400% increase in crimes reported to APD since the new transit stops were added.
20. This increased foot traffic as resulted in health and safety impacts, caused by the use of the subject property as an open bathroom.
21. The requested fence will materially enhance the safety, health and welfare of the public.
22. The proposed fence design is modern and see through for public safety and within the property boundaries.
23. The proposed fence will provide reasonable protection from possible nuisances and hazards and otherwise protect and improve the public health.
24. A site plan, photographs of the subject property and representations of the proposed fence were submitted with the application in support of the application.
25. Transportation has given a conditional approval for the proposed fence, as long as the design does not impair the view above 3 feet within the clear sight triangle.
26. 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).
27. 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).
28. 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).
29. 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).
30. 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).
31. The proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).

32. 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 max 3 ft wall height.

CONDITIONS:

The design of the fence 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.

APPEAL

If you wish to appeal this decision, you must do so by April 18, 2019 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.



Stan Harada, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
Santa Fe Pacific Trust, Inc, 123 Central Ave NW, 87102