



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

Cathedral Church of St John requests a variance of 5 ft to the 3 ft max wall height for Lot 6-12, Block 31, NM Town Company's Original Townsite, located at 318 Silver Ave SW, zoned MX-FB-UD [Section 14-16-5-7(D)]

Special Exception No:..... **VA-2019-00048**
Project No: **Project# 2019-002073**
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, Derrick Archuleta agent for property owner Cathedral Church of St John ("Applicant") appeared before the Zoning Hearing Examiner ("ZHE") requesting a variance of 5 ft to the 3 ft max wall height ("Application") upon the real property located at 318 Silver Ave SW ("Subject Property"). Below are the ZHE's findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 5 ft to the 3 ft max 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. Derrick Archuleta, agent for Cathedral Church of St. John, 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-FB-UD.
7. The subject property is a church located on Silver Ave. on the corner of 3rd St. SW.
8. The subject property is located in the Downtown Center as designated in the ABC Comp. Plan.
9. The subject church is designated as a historic building, subject to a review pursuant to Section 14-16-6-6.
10. An e-mail from Leslie Naji, Sr. Planner, Historic Preservation Landmarks Commission, dated March 8, 2019, stating the LC has no objection to the requested variance, was submitted in support of the Application.
11. The subject property is located within the 4th MS/MT and the 2nd St MT.
12. Silver Platinum Downtown Neighborhood Association is the affected Neighborhood Association.
13. An e-mail from Ron Casias, Chair/Spokesman for Silver Platinum NA, dated January 23, 2019, reporting the NA has no objections to the requested variance, was submitted in support of the Application.
14. The Church has been the victim of numerous property crimes, including graffiti, destroyed sprinkler plumbing ripped out, broken windows, trash, vandalism, theft and loitering.
15. There have also been harassment and assaults on the members and guests to the Church.
16. Many adjacent properties in the surrounding area already have taller fences for security and crime prevention.
17. A site plan, with accompanying drawings and photographs showing the subject property and the immediate area surrounding the property.
18. The proposed wall will be constructed of Wrought iron posts and see through wrought iron pickets.
19. Additional photographs were submitted showing property damage and vandalism to the church.
20. The requested variances would allow a 6 foot tall wall on the Silver Ave. frontage and the first 10 feet of the side yard.
21. The proposed fencing on the side yard boundary is currently permissible to 8 feet.
22. Diane Butler, 820 Carlise Blvd. NE, appeared and gave evidence in support of the Application..
23. The taller fence is absolutely necessary to prevent the increasing problems caused by undesirable and criminal activities on church property.
24. Mary Erwin, 2100 Palomas Dr. NE, appeared and gave evidence in support of the Application.
25. She is a former member of the board managing the church and its property.
26. She can attest to the growing difficulties in maintaining the church and its properties.
27. It is becoming increasingly difficult to determine and remove persons on church property with motives not related to church activities.
28. The proposed wall would provide greater safety and security for the members and guests of the church.
29. The purpose of the request is to control access to the subject property.
30. Transportation issued a report indicating no objections to the requested variance.
31. Any proposed wall design shall not violate the clear sight triangle as required by transportation.

32. 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).
33. 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).
34. 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).
35. 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).
36. 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).
37. 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).
38. The ZHE finds that the Applicant has authority to pursue this Application.

CONCLUSIONS OF LAW:

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

DECISION:

APPROVAL of a variance of 5 ft to the 3 ft max 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).

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
Cathedral Church of St John, 318 Silver Ave SW, 87102
Arch+Plan Land Use Consultants, PO BOX 25911, 87125
Diane Butler, 820 Carlisle Blvd SE, 87106
Mary Erwin, 2100 Palomas DR NE, 87110