



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

Lungile Sinandile requests a variance of 3 feet to the 3 foot maximum wall height for Lot 39, Block 4, La Mesa, located at 120 Mesilla ST NE, zoned MX-M [Section 14-16-5-7-D]

Special Exception No:..... **VA-2019-00303**
Project No: **Project#2019-002834**
Hearing Date: 11-19-19
Closing of Public Record: 11-19-19
Date of Decision: 12-04-19

On the 19th day of November, 2019, property owner Lungile Sinandile (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 3 ft to the 3 ft maximum wall height (“Application”) upon the real property located at 120 Mesilla ST NE (“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 in the front yard.
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. Lunile William Sinandile, property owner appeared and gave evidence in support of the application.
5. The address of the subject property is 120 Mesilla NE.
6. The subject property is currently zoned MX-M.

7. The proposed project is erection of a wrought iron steel, see through fence in an area between two buildings on the subject lot.
8. All property owners within 100 feet and affected neighborhood association were notified of the application.
9. La Mesa Community Improvement Association and District 6 Coalition of Neighborhood Associations are the affected neighborhood associations.
10. The affected neighborhood associations were notified by e-mail dated August 14, 2019.
11. The business directly to the west is a light vehicle repair service and this owner has indicated verbal support for the request.
12. The other business to the west sells used hubcaps.
13. Other businesses to the east also support the requests.
14. The business on the subject property is a non-profit organization that provides services to young children and their parents.
15. There are two buildings located on the subject lot.
16. The area between the buildings currently has an existing stucco covered 6 foot block wall.
17. The area between the wall and the public sidewalk, parallel to Mesilla St. NE, has become an extremely unsafe area.
18. This area has been subjected to numerous acts of trespassing, vandalism, graffiti, illegal camping, solid waste disposal, littering, property damage, disposal of needles and hazardous material and biological waste.
19. Applicant and its employees have to clean this area of dangerous and hazardous waste on a daily basis.
20. A number of photographs evidencing these problems was submitted in support of the request.
21. The area for the requested fence is not within a clear sight nor min-clear sight triangle and will not pose a traffic visibility hazard.
22. This extreme public safety and welfare adverse material impact has created special circumstances justifying the request.
23. Transportation issued a report indicating no opposition as the proposed wall is not within a clear sight or mini-clear sight triangle.
24. Any proposed wall design shall not violate the clear sight triangle as required by transportation.
25. 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).
26. The proposed fence will help increase the public safety and welfare by eliminating the nuisance created by the circumstances.
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 the 3 ft maximum wall height in the front yard.

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 December 19, 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:

ZHE File
Zoning Enforcement
Lungile Sinandile, 120 Mesilla ST NE, 87108