



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

Albuquerque Indian Center requests a variance of 4 ft 4 inches to the 3 ft maximum wall height for Lot 9, Block 3, Unity Addn, located at 99999 Tennessee ST SE, zoned MX-L [Section 14-16-5-7(D)]

Special Exception No:..... **VA-2019-00351**
Project No: **Project#2019-002161**
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, Jim Strozier of Consensus Planning, agent for property owner Albuquerque Indian Center (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 4 ft 4 inches to the 3 ft maximum wall height (“Application”) upon the real property located at 99999 Tennessee ST SE (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 4 feet 4 inches to the 3 feet 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(N)(1).
4. Jim Strozier of Consensus Planning, agent for Albuquerque Indian Center, property owner, appeared and gave evidence in support of the application.
5. The address of the subject property is 99999 Tennessee St. SE.
6. The subject property is currently zoned MX-L.

7. The request is for a variance from Section 14-16-5-7(D)(1): ***DEVELOPMENT STANDARDS; Walls and Fences***; Table 5-7-1: Maximum Wall Height.
8. The maximum wall height in a front or side yard in a MX-L zone district is 3 feet.
9. The request is for a variance of 4 feet, 4 inches to the required 3 foot maximum wall height.
10. The proposed project is called: the **Tiny Homes Village Project**.
11. All property owners within 100 feet of the subject property and the affected neighborhood association were notified.
12. Trumbull Village Association; La Mesa Community Improvement Association and District 6 Coalition of Neighborhood Associations are the affected neighborhood associations.
13. The neighborhood associations were notified by e-mail dated August 16, 2019.
14. Applicant and their representatives met and discussed the Application with the La Mesa Community Improvement Committee on September 3, 2019.
15. After discussion, the LMCIC Board generally expressed support for the project.
16. A copy of the minutes of the meeting, accompanied by the sign-in sheet, was submitted in support of the Application.
17. Generally there is support for the project from the neighborhoods and no opposition to the fence variance requests.
18. A site plan, with detailed drawings, elevations and construction drawing were submitted in support of the Application.
19. The subject property is located at 105 Texas Street NE.
20. The site abuts Texas St. to the east and Tennessee to the west and Zuni Rd. to the south.
21. The property is comprised of ten parcels totaling approximately 1.5 acres and is currently zoned Mixed Use-Transition (MX-T).
22. In February 2019, the subject property was granted a zone change from MX-L to MX-T.
23. The proposed project is development of a cottage development with 30 tiny homes and a Village House on the property that will house individuals experiencing homelessness.
24. The property currently contains the existing Albuquerque Indian Center and parking lot which will remain.
25. The subject property is in the southern portion of the Near Heights Community Planning Area and International District of Albuquerque; within the Near-Heights Metropolitan Redevelopment Area and 660 feet from Central Ave Main Street and Major Transit Corridor.
26. The subject property is located north of Zuni Rd, south of Central Ave, west of Wyoming Blvd., and east of Louisiana Blvd.
27. Land use of surrounding properties include: vacant parcel and multi-family senior housing to the north; Public/Institutional to the east (University of New Mexico Southeast Heights Family and Community Health Center); Commercial/retail and Service and Single and Multi-family Residential to the south; and multi-family residential to the west.
28. The Tiny Homes Village will include: 30 tiny homes, and a Village House which will include shared facilities including laundry, kitchen and restrooms.
29. The development will be accessible from Texas Street via vehicular and pedestrian gate.
30. There is also a pedestrian gate onto Tennessee Street.

31. Existing development on the site includes an approximately 8,000 square foot building that houses the Albuquerque Indian Center and 22 space parking lot.
32. The Albuquerque Indian Center will be renovated as part of the project and continue to provide services to their clients.
33. A parcel consolidation was recently completed to combine seven City Lots (5, 6, 7, 8, 9, 13 and 14 – also referred to as Lot 5A in the Cartesian Survey) into one lot that will contain the Tiny Homes Village and parking lot.
34. The second lot consolidation combines City Lots 10, 11, and 12 (referred to as Lot 12-A in the Cartesian Survey) and will contain the existing Albuquerque Indian Center building and parking lot.
35. Applicant is proposing to install a perimeter fence around both lots that will provide security and add to the landscaping for the Tiny Homes Village development.
36. The proposed fencing will be constructed of tubular steel and concrete masonry unit (CMU).
37. The proposed fencing design will be primarily 3 foot CMU block with 4.4 feet of tubular steel on top which will be interspersed with a wall of 6.6 feet of opaque CMU block topped with 8 inches of tubular steel to provide additional screening and support for the pedestrian, vehicular and fire gates.
38. Transportation issued a report indication Conditional Approval to the Application.
39. Since the proposed fence appears to be within both the clear sight triangle and the mini-clear sight triangle, the condition is that no part of the fence within those areas above 3 feet block the clear sight triangles, and shall remain see through.
40. No one appeared in opposition to the Application.
41. The subject property is a through lot from Texas to the east and Tennessee to the west.
42. The property is large and requires additional fencing to secure the site for the Tiny Homes Village development and prevent pedestrians from inadvertently walking through the residential area.
43. The property is the only MX-T zone district in the area.
44. The cottage development allowed in the MX-T zone, creates a special circumstance for the property as it allows for low-density residential which necessitates additional, clear, distinct site boundaries, which the perimeter fencing provides.
45. Surrounding residential uses are multi-family high density with clear property boundaries inherent in the design.
46. 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).
47. The fencing will add to public safety of the area by securing a site that is currently vacant and underdeveloped.
48. The current perimeter fencing on the site is chain link and razor wire, material discouraged by the IDO.
49. The combination of see through steel fencing and opaque CMU block walls will provide aesthetically pleasing and additional screening, privacy, and acoustical buffering for residents from the public streets.

50. 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).
51. The project will provide substantial improvements to the area and surrounding properties.
52. The proposed fencing will improve the aesthetic and walkability of Texas, Tennessee and Zuni, by securing the site and creating a pleasant environment.
53. There is no evidence of adverse impacts on surrounding properties or infrastructure improvements in the vicinity.
54. 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).
55. The purpose of the MX-T zone is to act as a transition from high intensity commercial to lower intensity residential.
56. The property is located near the intense commercial corridor of Central Ave.
57. The proposed fencing will provide a transitional design to the lower intensity residential to the south.
58. The fencing material and design is aesthetically pleasing and secure and a welcome change from chain link, razor wire and other harsh materials used in the surrounding area.
59. The proposed fencing will provide an example of ideal fencing materials and design for future development in the area.
60. The request will protect the quality and character of residential neighborhoods; provide for the efficient administration of land use and development regulations in the City; protect the health, safety and welfare of the public; and ensure development in the City is consistent with the spirit and intent of the IDO.
61. 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).
62. The project is a unique development for individuals experiencing homelessness, and the security of the site is of primary importance.
63. The request will ensure the site will be secure for its residents and provide a successful development for the City and the surrounding neighborhoods.
64. 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).
65. The proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
66. The Applicant has authority to pursue this Application.

CONCLUSIONS OF LAW:

The criteria within Section 14-16-6-6(N)(3)(a) of the IDO are satisfied.

DECISION:

APPROVAL of a variance of 4ft 4in to the 3 foot maximum 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 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
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