



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

Ahmet Tiryaki requests a variance of 3 ft to the maximum 3 ft wall height for Lot 3, Marble Townhomes, located at 1200 Cagua DR NE, zoned R-ML [Section 14-16-5-7(D)]

Special Exception No:..... **VA-2019-00285**
Project No: **Project#2019-002800**
Hearing Date: 10-15-19
Closing of Public Record: 10-15-19
Date of Decision: 10-30-19

On the 15th day of October, 2019, Roger Cinelli, agent for property owner Ahmet Tiryaki (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 3 ft to the maximum 3 ft wall height (“Application”) upon the real property located at 1200 Cagua DR 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.
2. The City of Albuquerque Integrated Development Ordinance Section 14-16-6-6(N)(3)(c) Variance for a Taller Front or Side Yard Wall reads: “*A variance application for a taller front or side yard wall shall be approved by the Zoning Hearing Examiner, if and only if, the Zoning Hearing Examiner finds all of the following:*”
 - (1) *The proposed wall would strengthen or reinforce the architectural character of the surrounding area;*
 - (2) *The proposed wall would not be injurious to adjacent properties, the surrounding neighborhood, or the larger community;*
 - (3) *The wall is proposed on a lot that meets any of the following criteria:*
 - a. *The lot is at least ½ acre;*
 - b. *The lot fronts a street designated as a collector or above in the LRTS guide;*
 - c. *At least 20 percent of the properties within 330 feet of the lot where the wall or fence is being requested have a wall or fence over 3 feet in the front yard.*
 - (4) *The design of the wall complies with any applicable standard in Section 14-16-5-7 (Walls and Fences), including, but not limited to Subsection 14-16-5-7(E)(2) (Articulation and alignment) and Subsection 14-16-5-7(E)(3) (Wall Design), and all of the following:*
 - a. *The wall or fence shall not block the view of any portion of any window on the front façade of the primary building when viewed from 5 feet above ground level at the centerline of the street in front of the house.*
 - b. *The design and materials proposed for the wall or fence shall reflect the architectural character of the surrounding area.*
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. Roger Cinelli, agent for Ahmet Tiryaki, property owner appeared and gave evidence in support of the application.
5. The address of the subject property is 1200 Cagua Dr. NE.
6. The subject property is currently zoned R-ML.
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 proposed wall would be constructed of CMU Blocks, stucco coated to match the color and texture of the townhouses, which will be constructed in a Northern New Mexico style.
9. A site plan, with accompanying photographs was submitted in support of the Application.
10. All property owners within 100 feet and affected neighborhood association were notified of the application.
11. Mile High Neighborhood Association and District 7 Coalition of Neighborhood Associations are the affected neighborhood associations.
12. The neighborhood associations were notified by e-mail dated August 28, 2019.
13. An e-mail from Cynthia Serna, President Mile High Neighborhood Association, dated August 14, 2019, indication the neighborhood association has no opposition to the Application, was submitted in support of the Application.
14. An e-mail from Theresa West, dated August 14, 2019, indicating Fair Plaza, Inc., does not oppose the project, was submitted in support of the Application.
15. The subject property is located on the southwest corner of Cagua NE and Marble NE.
16. The adjacent zone district across Marble NE, to the south of the subject property is zoned MX-M.
17. The subject property was formerly a tract of land, which contained a 12 unit office complex.
18. This use had become abandoned and the land became vacant for seven years and had become a nuisance property in the neighborhood and surrounding community.
19. A high number of calls for service developed as a result of loitering, trespassing, graffiti, waste and trash, and hazardous materials, such as needles and biologic wastes and created a material adverse impact for the surrounding area.
20. The office complex also occupied two lots to the west of the subject property, which were also purchased by Applicant.
21. The owner purchased the entire property in 2017 and removed the existing blighted and abandoned buildings.
22. Applicant completed a 24 unit townhouse project at 6001 Marble NE, across Cagua Dr. from the subject property in December 2018.
23. The subject property is being redeveloped into an 8 unit townhouse development.
24. The subject lots were formerly developed for commercial uses (office complex), and the proposed project is to develop a multi-family residential/townhouse use.
25. The property has not been developed as a low density residential development.
26. The subject site is within both an Area of Change as designated by the ABC Comp. Plan, and is along a Main Street (San Pedro Dr.) and a major Transit Corridor (Lomas Blvd.).
27. The proposed walls would be located along the side street setbacks along Marble Ave., and would protect private courtyards located on the rear yards of the units.
28. The Fair Plaza Shopping Center, zoned MX-M, is located across Marble Ave.
29. Transportation issued a report indicating No Objection to the Application.
30. Any proposed wall design shall not violate the clear sight triangle as required by Transportation.

31. The proposed wall would strengthen or reinforce the architectural character of the surrounding area as required by Section 14-16-6-6(N)(3)(c)(1).
32. The wall would not be injurious to adjacent properties, the surrounding neighborhood, or the larger community as required by Section 14-16-6-6(N)(3)(c)(2).
33. The area of the subject property is greater than ½ acre in size as required by Section 14-16-6-6(N)(3)(c)(3)a.
34. No one appeared in opposition to the Application.
35. 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).
36. 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 3 ft to the 3 ft 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 November 14, 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

Roger Cinelli, 2418 Manuel Torres LN NW, 87107

Ahmet Tiryaki, 1815 Cagua DR NE, 87110