



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

Gary F. Hoffman requests a variance of 3 feet to the 3 foot maximum wall height for Lot 1, Block 39, University Heights, located at 202 Richmond DR SE, zoned MX-T [Section 14-16-5-7-D]

Special Exception No:..... **VA-2020-00379**
Project No: **Project#2020-004657**
Hearing Date: 12-15-20
Closing of Public Record: 12-15-20
Date of Decision: 12-30-20

On the 15th day of December, 2020, property owner Gary F. Hoffman (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 3ft to the 3ft maximum wall height (“Application”) upon the real property located at 202 Richmond DR SE (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 3ft to the 3ft 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 has authority to pursue this Application.
4. 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).
5. Applicant appeared and gave evidence in support of the application.
6. All property owners within 100 feet of the subject property and the affected neighborhood association were notified.

7. The subject property is currently zoned MX-T.
8. The ZHE received written evidence and testimony from the Nob Hill Neighborhood Association, the Southeast Heights Neighborhood Association and certain individual neighbors, regarding the Application.
9. Applicant has not established that 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). Applicant asserted in written submittals and oral testimony that the special circumstances justifying the variance are the existence of homeless people, alcohol and drug users, and panhandlers in the area, all of which pose a safety hazard to the residents of the subject property. The ZHE can certainly sympathize with a difficult situation. However, these conditions appear to apply generally to neighboring properties in the vicinity, rather than uniquely to the subject property. As such, they do not satisfy the requirement of special circumstances under the IDO.
10. Given that the required element of special circumstances has not been satisfied, the variance must be denied, and it is therefore unnecessary to examine any other element required to establish a variance.

DECISION:

DENIAL of a variance of 3ft to the 3ft maximum wall height.

APPEAL:

If you wish to appeal this decision, you must do so by January 15, 2021 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.



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Zoning Hearing Examiner

cc:

ZHE File
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