



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

Kaplan Central LLC – Art Kaplan
(Agent, Joe Garcia – VP of Operations)
requests a Variance of 3 ft wall height
in street side yard for Lot B/Parcel,
Block 28, Valley View Addn, located at
5115 Central Ave NE, zoned MX-M
[14-16-5-7(D)(1) Table 5-7-1]

Special Exception No:..... **VA-2024-00051**
Project No: **Project#2024-010031**
Hearing Date: 04-16-24
Closing of Public Record: .. 04-16-24
Date of Decision: 05-01-24

On the 16th day of April, 2024, Agent for property owner Joe Garcia (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 3 ft wall height in street side yard (“Application”) upon the real property located at 5115 Central Ave NE (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 3 ft wall height in street side yard.
2. The ZHE finds that the Applicant has authority to pursue this Application.
3. Applicant has duly authorized Agent to act on behalf on Applicant’s behalf regarding the Application.
4. All property owners within 100 feet and affected neighborhood association(s) were notified.
5. 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).
6. The City of Albuquerque Integrated Development Ordinance (“IDO”), Section 14-16-6-6(O)(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 a single lot 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, physical characteristics, natural forces or government actions for which no compensation was paid. Such special circumstances of the lot either create an extraordinary hardship in the form of a substantial and unjustified limitation on the reasonable use or economic 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.”

Applicant bears the burden of providing a sound justification for the requested decision, based on substantial evidence, pursuant to IDO Section 14-16-6-4(E)(3).

7. The applicant bears the burden of showing compliance with required standards through analysis, illustrations, or other exhibits as necessary, pursuant to IDO Section 14-16-6-4(E)(4).
8. Agent appeared and gave evidence in support of the application.
9. The subject property is currently zoned MX-M
10. Based on evidence submitted by or on behalf of Applicant, it appears 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). Specifically, Applicant testified and confirmed in written submittals that the Subject Property has a higher risk of trespassing and vagrancy because of its location near a major city bus stop. Additionally, Applicant testified that damage of over \$25,000 has occurred on Subject Property and situations that have posed a risk to Applicant.
11. Based on evidence submitted by or on behalf of Applicant, 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). Specifically, Applicant testified and confirmed in written submittals that the variance of 3 feet to the wall height would increase in safety of the property of the Applicant and safety of the patrons of Subject Property.
12. Based on evidence submitted by or on behalf of Applicant, 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). Specifically, Applicant testified and confirmed in written submittals that the Subject Property is a building that stands on its own and its location does not impede traffic or block view from traffic.
13. Based on evidence submitted by or on behalf of Applicant, 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). Specifically, Applicant testified and confirmed in written submittals that the variance would protect public safety and property, and would otherwise be developed in accordance with the IDO.
14. Based on evidence submitted by or on behalf of Applicant, 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). Applicant testified and confirmed in written submittals that any lesser variance would be infeasible.
15. The City Traffic Engineer submitted a report stating no objection to the Application.

DECISION:

APPROVAL of a variance of 3 ft wall height in street side yard.

APPEAL:

If you wish to appeal this decision, you must do so by May 16, 2024 pursuant to Section 14-16-6-4(V), 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.



Robert Lucero, Esq.
Zoning Hearing Examiner

cc:

ZHE File
Zoning Enforcement
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 - (2) *The Variance will not be materially contrary to the public safety, health, or welfare.*
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(5) The Variance approved is the minimum necessary to avoid extraordinary hardship or practical difficulties.”

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10. Based on evidence submitted by or on behalf of Applicant, it appears 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). Specifically, Applicant testified and confirmed in written submittals that the Subject Property has a higher risk of trespassing and vagrancy because of its location near a major city bus stop. Additionally, Applicant testified that damage of over \$25,000 has occurred on Subject Property and situations that have posed a risk to Applicant.
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DECISION:

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