On the 16th day of April, 2019, property owner Steve Nakamura (“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 2821 4th ST NW (“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)(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).
5. The subject property address is 2821 4th St. NW, on the corner of 4th and Phoenix NW
6. A site plan, photographs of the subject property and elevations of the proposed wall were submitted in support of the Application.
7. The proposed wall will be constructed of wrought iron fencing.
8. The proposed wall will replace an existing chain link fence.
9. The proposed fence will provide greater security for its students.
10. The adjacent business to the south is an auto parts store.
11. All property owners within 100 feet and affected neighborhood association were notified of the application.
12. Near North Valley Neighborhood Association, is the affected Neighborhood Association.
13. A letter from Marit Tully, President of Near North Valley NA, dated April 13, 2019, stating that the Board of the NA, approved the request, was submitted in support of the Application.
14. Marit Tully, appeared and gave testimony in support of the Application.
15. The subject property is currently zoned M-XM.
16. The business for the subject property is Gordon Bernell Charter School.
17. The proposed wall would enhance the architectural character of the surrounding community.
18. The proposed wall would add and enhance the safety, health and welfare of the adjacent neighborhood and surrounding community.
19. The proposed wall would not cause adverse material impacts on surrounding properties and would not require any infrastructure improvements.
20. The proposed wall would enhance the purposes of the IDO and the zone district.
21. The school has just obtained its certification from the state Department of Education.
22. Transportation issued a report indicating Conditional Approval of the Application.
23. Any proposed wall design shall not violate the clear sight triangle as required by transportation.
24. 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).
25. 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).
26. 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).
27. 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).
28. 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).
29. 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).
30. 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); 14-16-5-7(E)(2) (Articulation and Alignment); 14-16-5-7(E)(3) (Wall Design).

APPEAL

If you wish to appeal this decision, you must do so by May 16, 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.

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Stan Harada, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
    ZHE File
    Steven Nakamura, PO BOX 73, Corrales, NM 87048
    Steve Hernandez, 9320 Menaul Blvd NE, Ste D, 87112
    Marit Tully, PO BOX 6953, 87197