Gerald Landgraf requests a variance of 3 ft to the 3 ft max wall height in an MX-M zone for Lot 3A, Block 3, Mankato Place, located at 3812 Central Ave SE, zoned MX-M [Section 14-16-3-4(I)(3)(c)]

On the 15th day of January, 2019, property owner Gerald Landgraf (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 3 ft to the 3 ft max wall height in an MX-M zone (“Application”) upon the real property located at 3812 Central Ave SE (“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 max wall height in an MX-M zone.
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. All property owners within 100 feet and affected neighborhood association were notified of the application.
5. The subject property is currently zoned MX-M.
6. Nob Hill Neighborhood Association is the affected NA.
7. A site plan was submitted.
8. Gerald Landgraf, owner appeared and gave evidence in support of the application.
9. The subject property is located on Central Ave.
10. Safety is a major issue and concern for the subject property.
11. Central Ave is the major arterial street for the City.
12. There is a bus stop directly in front of the subject property.
13. There have been a large number of incidents involving loitering, camping, assaults, burglaries, vandalism and property damage.
14. A No Trespassing sign has been posted on the subject property.
15. There is a constant nuisance and public safety hazard created when homeless persons camp in the courtyard of the property.
16. The owners must constantly clean up waste, garbage refuse, needles and other hazardous discarded waste.
17. Windows of the art studios were smashed and doors kicked in and resulted in several thousand dollars of damage.
18. A number of these incidents were reported to APD.
19. Copies of APD incident reports were submitted.
20. The primary commercial business is a fine arts gallery.
21. A public art piece is displayed in front of the business.
22. One purpose of the proposed fence is to protect the art business and prevent entry to second floor offices and residences.
23. The proposed fence will be 42 feet from the sidewalk edge.
24. It will be painted to match colors of the existing architecture.
25. The proposed fence would enhance the public safety.
26. A letter dated November 19, 2018, signed by Gary Eyster, President of the Nob Hill NA, showing unanimous board approval for the Application.
27. Since the proposed fence is see-thru, the only concern raised in the letter wanting to insure the design would provide for “eyes on the street” is rendered moot.
28. Other business owners in the surrounding area support the Application.
29. The adjacent properties and surrounding neighborhood is composed of commercial businesses.
30. Transportation issued a report stating Conditional Approval of the Application.
31. Any proposed wall design shall not violate the clear sight triangle as required by transportation.
32. The proposed fence will be constructed of thin welded wire and will be completely see-thru.
33. A photo showing an example of the fence type was submitted.
34. 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).
35. 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).
36. 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).
37. 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).
38. 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).
39. 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).
40. 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 max wall height in an MX-M zone.

CONDITIONS:

The design of the fence shall comply with applicable design standards, specifically 5-7 (Walls and Fences); 5-7(E)(2) (Articulation and Alignment) and 5-7(E)(3) (Wall Design).

APPEAL

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

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Stan Harada, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
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