Fortunada LLC requests a variance of 3 ft to the 3 ft max wall height in the side yard setback for Lot A, Block 28, Perea Addn, located at 504 14th ST NW, zoned MX-L [Section 14-16-5-7(D)]

Special Exception No:............ VA-2018-00212
Project No:.................... Project# 2018-001862
Hearing Date:................... 01-15-19
Closing of Public Record:...... 01-15-19
Date of Decision:............... 01-30-19

On the 15th day of January, 2019, Kim Wolfe, of New Mexico Zoning, agent for property owner Fortunada LLC (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 3 ft to the 3 ft max wall height in the side yard setback (“Application”) upon the real property located at 504 14th 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 max wall height in the side yard setback in a non R-1 zone district.
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-L.
6. Downtown Neighborhoods Association is the affected NA.
7. An e-mail dated November 20, 2018 was sent notifying the NA of the Application.
8. Nothing has been submitted by the NA.
9. A site plan with elevations was submitted.
10. A number of photographs of the existing building and surrounding area were submitted.
11. Kim Wolf, agent for owner appeared and gave evidence in support of the application.
12. Although the official address for the subject property is on 14th St. NW, the building and its main business entrance is situated on Lomas Blvd, an arterial street as defined by the LRTS Guide.
13. The door on 14th St. is the rear door of the law office.
14. The front yard is actually a side yard due to the orientation of the building.
15. The lot is smaller than other similar lots in the surrounding area.
16. The occupying business is a law firm.
17. Safety and security is a major issue for both clients and staff employed by the law firm.
18. There are constant intrusion of vagrants, homeless individuals and drunken persons, passed out individuals and trespassers camping on the property behind the law office.
19. There have been incidents of vandalism and property damage, including new windows in the office being deliberately broken.
20. Law office staff is constantly cleaning up debris, trash, garbage, needles and other hazardous materials from the area behind the office.
21. A search of the City database of a six month time period shows 268 police reported incidents within a 4 block radius of the subject property.
22. Transportation issued a report stating Conditional Approval of the Application.
23. Any proposed wall design shall not violate the clear sight triangle as required by transportation.
24. No one appeared in support or opposition to the Application.
25. 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).
26. 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).
27. 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).
28. 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).
29. 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).
30. 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).
31. 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)(a) of the Albuquerque Zoning Code are satisfied.

DECISION:

APPROVAL of a variance of 3 ft to the 3 ft max wall height in the side yard setback.

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); 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
    Fortunada LLC, 504 14TH ST NW, 87104
    NM Zoning, 8706 Woodland Ave NE, 87112