Mesa Ridge Apartments LLC requests a variance of 3 ft to the max 3 ft wall height for Lot A, Atrisco Apts, located at 3501 Atrisco DR NW, zoned R-MH [Section 14-16-5-7(D)]

Special Exception No:........ VA-2018-00217
Project No:......................Project# 2018-001868
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, Steven Hernandez, agent for property owner Mesa Ridge Apartments LLC (‘Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 3 ft to the max 3 ft wall height (“Application”) upon the real property located at 3501 Atrisco DR 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 max 3 ft wall height in an R-MH zone district.
2. 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.
3. 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.”
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. All property owners within 100 feet and affected neighborhood association were notified of the application.
6. The subject property is currently zoned R-MH.
7. Ladera Heights neighborhood Association and Villa de Paz HOA, Inc. are the affected NAs.
8. An e-mail dated November 21, 2018, sent by Allan Ludi, president of Ladera Heights NA in support of the Application was submitted.
9. An e-mail dated November 24, 2018 showing support from the Villa del Paz HOA was submitted.
10. A site plan of the proposed fencing was submitted.
11. Steven Hernandez, agent for the owner appeared and gave evidence in support of the application.
12. There have been a number of violent criminal incidents on the subject apartment complex.
13. These incidents include multiple shootings and a murder.
14. There have been numerous other criminal incidents.
15. Safety is a major concern for the managers and renters of the subject apartment complex.
16. A large volume of transient persons crossing the subject property have contributed to these crimes.
17. A large number of trespassing complaints have taken place on the apartment complex.
18. The proposed wrought iron fencing would enhance the safety of the residents, as well as enhance the safety of the surrounding area by discouraging transient traffic in the area.
19. The proposed fencing would beautify the surrounding community.
20. The proposed fencing would match existing fencing of other commercial properties in the area.
21. Transportation reported Conditional Approval of the Application.
22. Any proposed wall design shall not violate the clear sight triangle as required by transportation.
23. 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).
24. 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).
25. 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).
26. 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).
27. 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).
28. 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).
29. 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 max 3 ft wall height.

CONDITIONS:

The design of the fence shall comply with any applicable design standards in Sections 5-7 (Walls and Fences); 5-7(E)(1) (Materials and Textures); 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.

Stan Harada, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
Mesa Ridge Apartments, 3501 Atrisco DR NW, 87120
Steven Hernandez, 9320 Menaul Blvd NE Ste D, 87112