



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

VSF/REF Family Trust requests a variance of 3ft to the 3 ft max wall height for Lot 18, 17, 16, 15, 14, 13 Block 39, Ridgecrest Addn, located on 4849 Gibson Blvd SE, zoned R-MH [Section 14-16-5-7(D)]

Special Exception No:..... **VA-2019-00001**
Project No: **Project# 2019-001931**
Hearing Date: 03-19-19
Closing of Public Record: 03-19-19
Date of Decision: 04-03-19

On the 19th day of March, 2019, Doug Martinez, Scott's Fencing, agent for property owner VSF/REF Family Trust ("Applicant") appeared before the Zoning Hearing Examiner ("ZHE") requesting a variance of 3ft to the 3 ft max wall height ("Application") upon the real property located at 4849 Gibson Blvd SE ("Subject Property"). Below are the ZHE's findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 3ft to the 3 ft max 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).
4. Doug Martinez at Scott Fencing, agent for VSR/REF Family Trust, owner appeared and gave evidence in support of the application.
5. All property owners within 100 feet and affected neighborhood association were notified of the application.

6. The subject property is currently zoned RM-H.
7. Parkland Hills NA is the affected Neighborhood Association.
8. Applicant notified the affected NAs by e-mail dated December 19, 2018.
9. Nothing has been submitted in opposition or support of the application.
10. No one appeared in opposition or support for the Application.
11. The subject property is greater in area than .5 acre.
12. A site plan and accompanying photographs were submitted in support of the application.
13. The business on the subject commercial property is a multi-family apartment building, located on Gibson Blvd. SE.
14. Gibson Blvd is an arterial street as defined by the LRTS Guide.
15. The subject property is in the Kirtland Air Force Base Military Influence Area.
16. An e-mail from Malak Hakim, AICP, Community Planner for Kirtland AFB, dated February 4, 2019 expressing no concerns was submitted in support of the application.
17. The subject property is located in an Airport Protection Overlay Zone.
18. An e-mail from Jim Hinde, Deputy Director for ABQ Sunport, dated February 5, 2019, stating no opposition was submitted in support of the application.
19. Transportation issued a report indicating conditional approval, as long as any proposed fence design shall not violate the clear sight triangle as required by transportation.
20. The proposed wall will be constructed of welded mesh wire, and is a see through design.
21. A site plan was submitted in support of the application.
22. Site photographs and drawings of the proposed fence were submitted in support of the application.
23. There have been incidents reported of vandalism, property damages, and assaults on the subject property.
24. The proposed fence would ensure and enhance the safety of patrons, their guests and visitors to the subject apartment business.
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 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 is satisfied.

DECISION:

APPROVAL of a variance of 3 ft to the 3 ft max wall height.

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); 5-7(E)(3) (Wall Design) and Section 14-16-6-6(N)(3)(c)4 a and b.

APPEAL

If you wish to appeal this decision, you must do so by April 18, 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
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