



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

Daniel and Juana Ramirez request a variance of 4ft to the 3ft maximum wall height for Lot 12, Block 3, Buena Tierra Addn, located at 2905 2ND ST NW, zoned MX-M [Section 14-16-5-7-D]

Special Exception No:..... **VA-2020-00286**
Project No: **Project#2020-004333**
Hearing Date: 10-20-20
Closing of Public Record: 10-20-20
Date of Decision: 11-04-20

On the 20th day of October, 2020, property owners Daniel and Juana Ramirez (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 4ft to the 3ft maximum wall height (“Application”) upon the real property located at 2905 2ND ST NW (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 4 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).
4. Applicant appeared and gave evidence in support of the application.
5. All property owners within 100 feet of the subject property and the affected neighborhood association were notified.
6. The subject property is currently zoned MX-M.

7. Based on evidence submitted by or on behalf of Applicant, it appears that 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). Specifically, applicant testified that the surroundings and location characteristics of the site are unique and merit the increased security that a higher wall would provide.
8. Based on evidence submitted by or on behalf of Applicant, 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). Specifically, evidence was submitted supporting that, if granted approval, the Applicant intends to use the property in a manner that is consistent with the IDO and the Development Process Manual (DPM). A representative of the affected neighborhood association spoke in favor of the proposed variance, affirming that no negative impact would result if the variance were granted.
9. Based on evidence submitted by or on behalf of Applicant, 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). Specifically, the proposed wall is designed to be in harmony and consistency with what currently exists in the neighborhood, which was supported by photographic evidence and oral testimony. However, it is unclear whether the proposed wall may impede access to adjacent properties.
10. Based on evidence submitted by or on behalf of Applicant, 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). Specifically, Applicant presented evidence that the intent of IDO will still be met in that the subject site will continue the existing use and the proposed wall would merely add to the safety and security of the site.
11. Based on evidence submitted by or on behalf of Applicant, 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). Specifically, Applicant testified that any lower construction of the wall would be ineffective. Thus, the applicant is not requesting more than what is minimally necessary for a variance.
12. City Transportation submitted a report stating no objection.
13. The proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
14. The Applicant has authority to pursue this Application.
15. After the record was closed in the October 20, 2020 hearing this matter, purported a neighboring property owner attempted to submit oral testimony, alleging that the proposed wall impeded rights of way and access to property. The ZHE cut-off further discussion and informed the purported neighbor that any additional discussion would constitute impermissible ex parte communication. Rule 5 of the ZHE Rules of Procedure provide that "The ZHE shall disclose any instance of an attempted ex parte communication; however, any such attempt should not, in and of itself, be grounds for recusal." This finding serves to disclose this attempted ex parte communication. The ZHE believes that this attempted ex parte communication is not grounds for recusal. However, it appears appropriate to defer this matter to allow the purported neighbor, the Applicant, and any other interested party to submit evidence and testimony.

DECISION:

DEFERRAL of the Application to be heard at the ZHE hearing at 9:00 a.m. on November 17, 2020.

APPEAL:

If you wish to appeal this decision, you must do so by November 19, 2020 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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cc:

ZHE File
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