



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

RM 401-40 Steve Nakamura (Agent, Development Managing Consultants) request a variance of 3ft to the 3ft maximum wall height for Lot 7, Martineztown Plan Phase 7, located at 405 Martin Luther King Ave NE, zoned MX-T [Section 14-16-5-7-D]

Special Exception No:..... **VA-2020-00306**  
Project No: ..... **Project#2020-004381**  
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, Development Managing Consultants, agent for property owner RM 401-40 Steve Nakamura (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 3ft to the 3ft maximum wall height (“Application”) upon the real property located at 405 Martin Luther King Ave NE (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 3ft to the 3ft maximum wall height.
2. All property owners within 100 feet of the subject property and the affected neighborhood association were notified.
3. The proper “Notice of Hearing” signage was posted for the required time period as required by The City of Albuquerque Integrated Development Ordinance (IDO), Section 14-16-6-4(K)(3).
4. Applicant, through its Agent and other representatives, appeared and gave evidence in support of the application. Certain neighbors appeared and gave evidence in opposition to or questioning of the Application.
5. The Subject Property is currently zoned MX-T.
6. The Subject Property is currently used as a school.
7. City Transportation submitted a report stating no objection.
8. The Applicant has authority to pursue this Application.
9. IDO 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.”*

10. The Applicant bears the burden of ensuring there is evidence in the record supporting a finding that all of the above criteria are met under Section 14-16-6-4(N)(1).
11. Applicant has not satisfied IDO Section 14-16-6-6(N)(3)(a)(1), regarding special circumstances. Based on evidence submitted by or on behalf of Applicant, it appears that there are no special circumstances applicable to the Subject Property that do not apply generally to other property in the same zone and vicinity, as required by Section 14-16-6-6(N)(3)(a)(1). Applicant cited crime, homelessness, drug use, vagrancy, trespassing and other social ills as the special circumstances. While the ZHE appreciates the challenges these social ills pose, especially to a school, evidence in the record makes clear that these social ills also challenge other properties in the vicinity, including without limitation another school in the immediate area. Because the criteria pertaining to special circumstances is not met, this Application must be denied.

DECISION:

DENIAL of a variance of 3ft to the 3ft maximum wall height.

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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Robert Lucero, Esq.  
Zoning Hearing Examiner

cc:

ZHE File

Zoning Enforcement

Steve Hernandez, Development Managing Consultants, [steve@dmcnm.com](mailto:steve@dmcnm.com)



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RM 401-40 Steve Nakamura (Agent, Development Managing Consultants) request a variance of 3ft to the 3ft maximum wall height for Lot 6A, Brooks Harold, located at 401 Edith Blvd NE, zoned MX-L [Section 14-16-5-7-D]

Special Exception No:..... **VA-2020-00307**  
Project No: ..... **Project#2020-004381**  
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, Development Managing Consultants, agent for property owner RM 401-40 Steve Nakamura (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 3ft to the 3ft maximum wall height (“Application”) upon the real property located at 401 Edith Blvd NE (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 3ft to the 3ft maximum wall height.
2. All property owners within 100 feet of the subject property and the affected neighborhood association were notified.
3. The proper “Notice of Hearing” signage was posted for the required time period as required by The City of Albuquerque Integrated Development Ordinance (IDO), Section 14-16-6-4(K)(3).
4. Applicant, through its Agent and other representatives, appeared and gave evidence in support of the application. Certain neighbors appeared and gave evidence in opposition to or questioning of the Application.
5. The Subject Property is currently zoned MX-T.
6. The Subject Property is currently used as a school.
7. City Transportation submitted a report stating no objection.
8. The Applicant has authority to pursue this Application.
9. IDO 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.”*

10. The Applicant bears the burden of ensuring there is evidence in the record supporting a finding that all of the above criteria are met under Section 14-16-6-4(N)(1).
11. Applicant has not satisfied IDO Section 14-16-6-6(N)(3)(a)(1), regarding special circumstances. Based on evidence submitted by or on behalf of Applicant, it appears that there are no special circumstances applicable to the Subject Property that do not apply generally to other property in the same zone and vicinity, as required by Section 14-16-6-6(N)(3)(a)(1). Applicant cited crime, homelessness, drug use, vagrancy, trespassing and other social ills as the special circumstances. While the ZHE appreciates the challenges these social ills pose, especially to a school, evidence in the record makes clear that these social ills also challenge other properties in the vicinity, including without limitation another school in the immediate area. Because the criteria pertaining to special circumstances is not met, this Application must be denied.

DECISION:

DENIAL of a variance of 3ft to the 3ft maximum wall height.

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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Zoning Hearing Examiner

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ZHE File

Zoning Enforcement

Steve Hernandez, Development Managing Consultants, [steve@dmcnm.com](mailto:steve@dmcnm.com)



CITY OF ALBUQUERQUE  
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NOTIFICATION OF DECISION

RM 401-40 Steve Nakamura (Agent, Development Managing Consultants) request a variance of 3ft to the 3ft maximum wall height for Lot 5, Block 4, Belvidere Addn, located at 405 Edith Blvd NE, zoned MX-L [Section 14-16-5-7-D]

Special Exception No:..... **VA-2020-00308**  
Project No: ..... **Project#2020-004381**  
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, Development Managing Consultants, agent for property owner RM 401-40 Steve Nakamura (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 3ft to the 3ft maximum wall height (“Application”) upon the real property located at 405 Edith Blvd NE (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 3ft to the 3ft maximum wall height.
2. All property owners within 100 feet of the subject property and the affected neighborhood association were notified.
3. The proper “Notice of Hearing” signage was posted for the required time period as required by The City of Albuquerque Integrated Development Ordinance (IDO), Section 14-16-6-4(K)(3).
4. Applicant, through its Agent and other representatives, appeared and gave evidence in support of the application. Certain neighbors appeared and gave evidence in opposition to or questioning of the Application.
5. The Subject Property is currently zoned MX-T.
6. The Subject Property is currently used as a school.
7. City Transportation submitted a report stating no objection.
8. The Applicant has authority to pursue this Application.
9. IDO 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.”*

10. The Applicant bears the burden of ensuring there is evidence in the record supporting a finding that all of the above criteria are met under Section 14-16-6-4(N)(1).
11. Applicant has not satisfied IDO Section 14-16-6-6(N)(3)(a)(1), regarding special circumstances. Based on evidence submitted by or on behalf of Applicant, it appears that there are no special circumstances applicable to the Subject Property that do not apply generally to other property in the same zone and vicinity, as required by Section 14-16-6-6(N)(3)(a)(1). Applicant cited crime, homelessness, drug use, vagrancy, trespassing and other social ills as the special circumstances. While the ZHE appreciates the challenges these social ills pose, especially to a school, evidence in the record makes clear that these social ills also challenge other properties in the vicinity, including without limitation another school in the immediate area. Because the criteria pertaining to special circumstances is not met, this Application must be denied.

DECISION:

DENIAL of a variance of 3 feet to the 3ft maximum wall height..

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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